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# Vol. II

## TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~495~~ 16

THE STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS, ET AL., ETC., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~494~~ 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~495~~ 18

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT,

*vs.*

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 27, 1929

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# SUPREME COURT OF THE UNITED STATES

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## No. 493

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*vs.*

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

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*vs.*

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

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Cross-examination.

(By Mr. Gwathmey:)

If I have an equality of rates interstate from Florida into Georgia on the one hand and intrastate in Florida, on the other, I would be glad to undertake to do business in Florida, yes, in competition with the Florida man. I should think the only difficulty would be in my ability to compete with my competitor or to undersell my competitor. If we have such an equalization of rates on the level of the present interstate rate from Florida into Georgia, we could do business in Florida yes, sir.

I did not attend the Valdosta hearing and was not there at all (Tes. p. 427).

Climax is in Georgia, Decatur County, just about ten miles east of Bainbridge. I have various kinds of mills. It don't compare with Long-Bell. I have two "ground rattlers" and a larger mill. I am obtaining logs in the mule-land country and environment of Climax on the Atlantic Coast Line. There is not as much timber there as there once was. I have not got enough to operate the mill in sight. I have not figured exactly how much more we have got ahead to cut. I would say it is a matter of more or less than five years. I don't ship logs at all by railroad and I have had absolutely no experience in that. I have talked with practical lumbermen to find out if it would be a practical thing to ship logs any great length and my impression is that it can be done with an equitable freight [fol. 708] rate and other conditions; Of course every condition has to be considered, but, taking a log loaded on a car, I figure that if the rate were the same to me as it was to any competitor, why I have an even break with him. I have made calculations as to whether I could ship profitably from Florida to Georgia. I didn't have to do it myself. The Atlantic Coast Line Railroad did it for me. This document I am going to read from is a private paper, but it does say, for instance here, that the rate under the present interstate rate from Capitola, Florida, to my place, a distance of 59 miles, is $16 for 24,000 pounds, excess in proportion. The same distance, the rate that applies here (Jacksonville) is $10.50. The Coast Line did not advise

me as to my ability to ship profitably from Florida into Georgia. This is self evident here. They didn't advise me except in their own figures here. You can make this comparison: Three cars of logs will make one car of rough lumber; that is about correct, approximately correct. Well they have a difference in—the manufactures here would have a difference in favor of them from sixty—I figure approximately from sixty to one hundred and some odd dollars a car—of sawing lumber; and at an approximate value of I figure from three to four hundred dollars of this amount—a difference in the rate alone of from sixty to one hundred and odd dollars on this given amount of lumber, that I have never been able to make as a profit in [fol. 709] the manufacture of lumber. If I could make that difference in the manufacture of lumber I would be perfectly satisfied to accept it as a profit of course (Tes. p. 431). The only information the Atlantic Coast Line gave me was the statement of the rate per car on log from Capitola and the distance in miles. I asked them for it; I forget the date; I could not say whether it was since the Valdosta hearing; I am not familiar with the Valdosta hearing. I would say it was in the last three or four months. They did not give me any other information in a letter; that is essentially the information that I asked for and what I got (Tes. p. 432). I had no subsequent communication with the Atlantic Coast Line with regard to this matter. I wrote them directly and got a reply direct. The exact date of the letter was in December, 1926. I have talked with practical lumber men. As to whether we have satisfied ourselves that even as an operating matter it is a feasible thing as a day in and day out proposition to ship logs to an interior mill for any considerable distance, I have said that I have had no experience. Practically I have; personally I have. I was at one time connected with the Case-Fowler Company at Macon; I mean I was familiar with the Case-Fowler operations, I did business for them (Tes. pp. 433, 434).

I stated that somebody had come from Florida and offered some timber on different and various occasions; that is correct. There have been such people as individual loggers; several of them. I would try to run a mill on that [fol. 710] kind of a supply; absolutely. Me or any other

man would prefer to do that. I try to specialize at the present time on roofers, car material, and some poplar. In the manufacture of roofers I use a comparatively low grade timber; that is right. As to whether it is the custom of the trade for the roofers themselves to cut the logs, well, I buy timber on contract. I buy timber produced by the mills. I don't ship anything to our mill at Climax. I bring there anything I can buy at a reasonable price to produce at a profit. It is both logs and lumber. We haul both logs and lumber. Our business is not buying low grade lumber from other people who cut the logs, no. I buy any way I can. I own the timber a general thing; most of my lumber is produced from timber that I own myself (Tes. p. 435). I do not ship lumber from my own mills; no, sir—no use. The method is to cut the timber with the smaller portable mills. It is the general practice in the manufacture of roofers for the timber to be cut either by an owner of the timber or by somebody else under contract with this small portable mill, and using the low-grade stumpage, like cut over lands and so forth, and then they either truck or sometimes possibly ship the lumber into the mill; there is where we really make our roofing, at the mill. If I were to acquire or could acquire timber lands in the State of Florida, there would be no change in that course of doing business. I would not begin for the first time shipping logs from Florida to Climax, and then begin [fol. 711] cutting the logs at Climax, and then making the roofers out of the logs; or cut the Florida timber with portable mills or buy under contract. I have a mill that is not in use, adapted to this particular purpose. My intention was to buy low-grade lumber in Florida, ship it to Climax, and utilize this particular mill on hardwood and hardwood exclusively, differently and independently from the roofer business. So far as our roofer business is concerned, you can disregard that, that would not injure us as a roofer shipper of logs at all. They don't ship logs into Georgia at all, they can't afford it. I have an idle hardwood mill which I want to put into operation if I could get a supply of logs for the purpose.

As to the difference between the rate to Climax from an origin point in Florida, on the one hand, and what is the rate within Florida on the Atlantic Coast Line for the

same number of miles haul, there is a difference of three cents per hundred pounds on logs, under the two rates, for the same number of miles, that means in terms of carload of lumber thirty cents a thousand there, approximately. Let's see if I am correct there with my figures. As to whether I was mistaken previously, the rates as they stand are self-evident; it is not necessary for either of us to figure it out, because it is published as it stands. I did not say that the difference in the Florida log rate and the interstate rate from Florida to Georgia would amount to as much as one hundred and sixty dollars a car on logs. I said approximately from sixty dollars to one hundred [fol. 712] and odd dollars. That would apply either to a car of finished or rough sawn lumber. That is the difference on the car of lumber resulting from the difference in the two log rates. I have figured as to whether I would be able to open this mill at Climax, start it in operation again and start it on logs if the Florida railroad rates, under the conditions as they now exist, were increased to as high as our own rate from Florida to Georgia; and I could do business on that, under hardwood—which is the only thing I figure on, on logs. I don't know anybody in Jacksonville shipping under a lower rate.

"Q. Well, I will ask you this: If none of your competitors are shipping hardwood under the Florida log rates, what difference would it make to you what those Florida log rates are, if you want to go into the hardwood business?"

"A. I see logs being shipped in here. It is reasonable to presume that they are shipped back here. It is notice to know what the rate is or for you to investigate it."

"Q. Mr. Davis, you have not examined particularly, have you, the question of whether any lumber manufacturer in Jacksonville is shipping logs to Jacksonville and manufacturing lumber that would compete with you in a common market, have you, on hardwood logs?"

"A. I am satisfied in my attitude, yes sir, I am convinced."

"Q. Can you say that you have come to such conclusion [fol. 713] after making investigation as to the hardwood situation, manufacturing everything out of those logs there?"

"A. I would say my information is correct. Yes; I have a reason for it."

"Q. Well, can you give the character of the information, without giving us the source of it? What is it, somebody talking to you on the street, or have you made an engineering investigation of the subject?"

"A. Well, I don't think it is necessary—I hope it is not necessary for me to discuss that."

"Q. Well, we understand you prefer, we assume under the ruling of the Examiner, not to disclose the information as a result of your allegation, tested in your own mind, that somebody in Jacksonville would attempt to ship logs to your disadvantage; that is about what you understand?"

"Exam. Brown: Please do not misconstrue my ruling to mean that the Commission would not consider such information pertinent or desirable. I am leaving that with the witness whether or not he will answer a question of that kind."

"Q. You would prefer not to discuss any information that you have or the source of it?"

"A. I can't discuss it."

The capacity of the mill I am now operating at Climax is about 20,000 feet a day. From the information I have on it the Florida timber that has been offered to me is between five and six million feet (Tes. p. 441). That wouldn't last me a year. I wouldn't undertake to engage in the establishment of a hardwood lumber business with a source of supply that would only be good for one year.

[fol. 714] We sell our manufactured product mostly north of the Ohio River and east of Chicago. Virginia gateways and north as a general thing. I think I would come into competition with every producer in the southeast or any place else. I concluded that I could do business under the present interstate rate. Well, I would like to enjoy the rate that Jacksonville has and other points for a while; for curiosity; yes. I am satisfied it would be profitable and a pleasure to do business under it (Tes. pp. [fol. 715] 442-443). It is my intention to embark on this business if the Jacksonville rate were raised. I intended to have been in the business before now. As to whether I

intend to embark upon it whether or not the Jacksonville rate is raised, I didn't consider that in the beginning; I did investigate it later, and I would be afraid to venture to do business under those conditions. I am interested in the relative carload cost of transporting the timber from the sources of supply to my mill provided that puts me on an equitable basis with the other producers (Tes. p. 443).

In my own way of reckoning the rates as laid down I figure that would be approximately a difference of sixty to one hundred and odd dollars in favor of the producers' rates that we have here, that is, to transport this hardwood timber under the present interstate rates from Georgia into Florida. I am talking about the sawn rough lumber. It would cost approximately $34 an average car to haul a carload of logs from Capitola to Climax under the present rate (Tes. p. 444). Of course no man knows; each car weighs different. We have got an average weight of ten or more pounds in the log size. I don't sell any lumber myself except f. o. b. my place. As to the location of this particular four or five million or six million feet that I spoke of, I would not disclose its location but for various sections.

[fol. 716] Redirect examination.

(By Mr. Perry:)

The reason for my refusal to answer the question as to the location of the timber is on account of the risk that I would encounter in my business.

The information I received from the Atlantic Coast Line Railroad was given in reply to a letter from me. I desired to know a given rate between given points and they wrote and told me what it was.

("By Mr. Price:)

"Q. Mr. Davies, in answer to Mr. Cotterill's and Mr. Adair's question as to the difference in amount on a car of finished lumber or rough lumber at Climax, as compared with some Florida manufacturing points, your difference is predicated on it taking three cars of logs to produce one car of lumber?"

"A. Yes."

"Q. Is that correct?"

"A. (Nods affirmatively.)

"Q. Then if Jacksonville or Perry or some other manufacturing point in Florida has a rate of ten dollars per car on logs for fifty thousand pounds, and it took three cars to produce a car of lumber, their logging transportation cost would be thirty dollars; is that correct?

"A. (Nods affirmatively.

"Q. That is just a matter of calculation. Then if the rate into Climax was thirty dollars a car, it would take the same amount of logs to produce a car of lumber at Climax as at some Florida manufacturing point, and your logging cost would be ninety dollars?"

"A. Correct."

"Q. The difference, of course, would be sixty dollars per car?"

"A. That is correct."

"Q. In favor of the Florida manufacturing points. Now, when you contemplated opening your mill at Climax, you got quotations on these Florida logs that you desired to use at Climax; you were acquainted with the rates in Flor- [fol. 717] ida, but you didn't know what the rates were from Florida to Georgia——"

"Mr. Cotterill: If your Honor please, ordinarily the objection to a question as leading is not pressed, because ordinarily, in rate statements no harm is done by it. We have here a rather critical situation. The witness has stated his point of view. Now, my lovable friend is endeavoring to argue it as he goes along and to make him say something else in addition. Under this particular circumstance I must ask that he comply with some reasonable requirement not to lead the witness. In the ordinary rate case it makes no difference."

"Exam. Brown: It is understood of course, you must not lead the witness."

"Mr. Price: Well, I am not a lawyer myself."

"Exam. Brown: Please read the last question, Mr. Reporter."

(The last question was read so far as propounded.)

"Q. Mr. Davies, you were familiar with this intrastate rate in Florida?"

"A. I made myself familiar with it, yes."

"Q. You did not know what the rate was from these Florida points to Climax?"

"A. I got that in a process of determining whether I could or not."

"Q. You didn't know what these rates were, and, therefore, you asked the Atlantic Coast Line to quote you?"

"A. Certainly."

"Q. And that is really the contents of this letter that you spoke of this morning?"

"A. Yes, sir."

"Q. Is that true?"

"A. Yes, sir."

[fol. 718] "Q. Now, from your investigation, as long as the present intrastate rates remain in force in Florida and the present interstate rates remain in force from Florida to Georgia, you will be prevented from drawing any of these logs from Florida into Georgia?"

Mr. Cotterill: Your Honor, we object; he says "you will be prevented."

"Q. Well, will you be prevented?"

"A. I consider it so; I wouldn't attempt it."

("By Mr. Perry:)

"Q. Did I understand you to say a while ago that the difference in the Florida rate, as compared with the interstate rate Florida to Georgia, results in as much profit as you care to make in the operation of your saw mill business?"

"A. I said I would be satisfied with the profit in the difference of those rates."

Recross-examination.

(By Mr. Cotterill:)

Mine is a circular mill, not a band mill. I did not say that the inbound cost of logs, transportation from Capitola to Climax would be ten dollars per car of twenty-four thousand pounds. If the Florida or Cummer scale rate existed to my place, I think it would be $10.50, as against $34 (Tes. p. 450). The $10.50 per car rate I understand

will apply to a car of approximately 50,000 pounds. Under the present interstate rate it is approximately 30,000 pounds. I would market my hardwood, if I make it at Climax, to the first man that would give me a satisfactory reply regardless of where he was. I know something about the hardwood lumber business. We haven't any market of any consequence except in the territory that I described a short while ago. I do not know what my lumber rate is from Climax to that territory. It is not necessary for me to know; I sell it on the cars at my mill (Tes. p. 451).
[fol. 719] As to whether I know what would be the lumber rate if that timber in Florida were to be cut and the lumber made in Florida instead of Georgia, that is out of the question with me; I am in Georgia. What the lumber rate would [fol. 720] be I haven't asked, I have not determined what it would be. If a difference in the lumber rate, Climax, as compared with what the lumber rate would be from the place where the timber is, was not more than two cents per 100 pounds on lumber, I would not consider operating a mill at Climax and pay ten dollars a car on logs.

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H. A. JACKSON was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

I am engaged in the manufacture of lumber at Valdosta, Ga., and I buy logs and ship them into Valdosta to be manand manufacture them into lumber, nor in competition with in Valdosta eventually will be of the nature to procure logs in Florida (Tes. p. 453). I am in competition with the manufacturers of lumber in Florida. I cannot buy logs in Florida now and ship them to Valdosta and manufacture them into lumber in competition with manufacturers in Florida. That is due to an advantage in freight rates that our competitors in Florida have over us. There is timber available, logs, within a hundred and seventy miles of Valdosta on the Atlantic Coast Line Railroad in Florida that I could procure if I had an equal show as to the freight

rates, interstate Florida to Georgia, as compared with the rates in Florida. As long as the rates referred to as the Florida rates remain in effect it is not possible for me to [fol. 721] procure logs in Florida and ship them to my mill and manufacture them into lumber, not in competition with the lower rate to the Florida manufacturer. The only way I can do it is to absorb the difference. The difference in rate interstate Florida to Georgia compared with the Florida rates certainly is of sufficient consequence in dollars and cents to make it an item of importance.

Cross-examination.

(By Mr. Cotterill:)

The name of my mill is Jackson Brothers Lumber Company. It is a band mill and flooring mill. The capacity is about 40,000 feet per day (Tes. p. 455). Besides flooring we make roofers, a finished product altogether. We are shipping logs to that mill at this time. We ship in from almost every direction, except west on the Coast Line. We ship in on the Coast Line east; and the Southern both north and south; and the G. & F. both north and south, and have shipped over the Coast Line from the west, but we are not right now. The greatest distance right now that I ship logs into my mill is about 40 miles. We have shipped more than a hundred miles; some special movement. Well, just the timber we got up on the Altamaha river, but we are not buying up there now (Tes. p. 456). I started in the lumber business in 1890 and have operated other than in Valdosta, in Alabama, Florida, and in north Georgia, and at Ray City up above Valdosta. I am not shipping any logs now from [fol. 722] Florida to Georgia. We really have not tried, are not trying to get timber because we couldn't afford to ship it in. I will correct that in just a minute. We have shipped some logs from Jennings, just across the line on the Southern. The saw mill is generally located where the timber is. That is the reason we located in Valdosta at this time, no big tracts of timber, but timber in that direction and we had seven tracts out of Valdosta (Tes. p. 457). As to whether in my judgment it would normally be a profitable thing to locate a mill a hundred or a hundred and fifty miles away from the source of your timber, of course

that would depend on the rate of freight you could get on it. There is an outside limit that I can pay, certainly. I know something about the log rates within Florida; I know some of the timber in Florida that I might be able to acquire. It is on the Atlantic Coast Line (Tes. p. 458). I have made no computation what would be the rate to Valdosta from that patch of timber that I had in mind in Florida if there were to be established from that timber tract to Valdosta a log rate in line with the Florida rates. I have not made a computation of that rate but I can give it to you from the record. It would be, I will say, from ten to twelve dollars a car of 50,000 pounds. My finished lumber goes east mostly, to Washington, Baltimore, Philadelphia and New York, and all up in that country—the better grade especially. I sell f. o. b. our mill. We sell delivered also, mainly f.o.b. mill. I do not know whether the mills [fol. 723] in Florida sell lumber in the East at a lower price than the Alabama mills do or than the Pacific Coast mills do (Tes. p. 460). I don't know who makes our market in the East. Taking the whole community, it takes the whole manufacturing district to make the market so far as I know. If we got rid of these Florida producers entirely, say they burned the mills or closed up business, there would be a change in the market conditions in the East, I think, because there would be that much less stuff offered on the market. I think it would affect it to some extent. The Alabama mills ship to the east, I suppose. As to whether I compete with them I have no definite knowledge. I don't know. I don't know as a matter of definite knowledge that the Florida mills do.

There is no question buf what we might acquire some timber in Florida. As to whether ordinarily when a man buys a timber tract of any commercial quantity, he wants to have his mill as near to it as he can, I don't know about that. Of course if a man had a tract big enough to justify the establishment of a mill, that would be the logical thing to do. If he had to build a mill at all the logical place to do it would be to put it where the timber was. I can tell you if I had money enough to buy the tract I wouldn't buy the mill (Tes. p. 461).

I have not figured at all on the difference in the lumber rates from Valdosta to the East and from that place in

Florida where the tract of timber is. It would be insignificant, though, as compared to the log. As to whether in [fol. 724] a given case where my outbound lumber rate to the east is only a cent or two lower than would be the outbound lumber rate from the very place where this patch of timber is, and whether I could possibly pay as much as even ten dollars per car on logs into Valdosta and live as a lumberman at all, well, it is worth considerable to have your business all together and not having to be building mills around for different tracts. The fact of the business, up our way, it has come to the point where you have got to put out just little bit of mills and go to the different little tracts, or build a mill in a central location and ship the logs. As to whether I know of anybody that has built a mill at a central location and tried to ship the logs from long range distances, yes, but I don't recall the pine mill in Georgia right now, but hardwood mills are doing that, but that would be a pure experiment as to pine. As I said, we have shipped from a hundred miles. It is my observation that a man located at tidewater having ocean freight rates outbound, on his finished product, can possibly afford to engage in long haul transportation of logs—if his regular rate is low enough (Tes. pp. 463-464).

[fol. 725] I think it would be practical to operate a mill to be located inland and to depend for its source of supply of logs on a rail haul of sixty or seventy-five miles, with a reasonable rate.

I certainly do think [redacted]his interstate rate from Florida to Valdosta as being higher than it ought to be.

"Q. Mr. Jackson, even if the rate in Florida were pulled out entirely and you put those other lumber companies out of business as a result of it, would you be able to ship logs from Florida to Georgia on that present rate from Florida to Georgia—would you try to do it now?"

"A. Well, give us as long a club as the other fellow and we would be at it.

"—. Well, the other fellow at Jacksonville, he is out of it entirely, you have put him out of business."

"A. No, there would be somebody else, though."

If those fellows are put out completely at Jacksonville and we are left with the present rate from Florida to

Georgia, we would be relieved of their competition in the market. As to whether under those conditions I would attempt to acquire logs in Florida and ship them to Valdosta, Georgia, I don't know that I would in Florida because at Valdosta we are within twenty miles of Florida; we can get all the timber we can use in fifty or sixty miles of Valdosta.

[fol. 726] There is timber all along the northern boundary of Florida, long leaf pine timber, commercial timber, good for anything that yellow pine is good for. Of course they have got out in the western part of Florida, they have got a lot of short-leaf out there. There is timber in commercial workable quantities comparatively near the Georgia line in Florida. It is not there in quantities to build a finishing mill, but it is there to ship in to a mill in a central location. We ship logs and we are shipping it out of Georgia. I began figuring on the possibility of using timber in Florida before we built the mill. We didn't go into that as thoroughly as we should, probably, and we didn't investigate this high interstate rate. If I had to do it over again I don't think I would have located my mill in Florida. I don't know of a point in Florida that is not already supplied with a mill and has the advantages that Valdosta has. I was talking about the different lines of railroad running out in every direction from Valdosta. That is an advantage. It covers that much more territory for logging; we get logs in over all those different lines (Tes. pp. 467-468). Eventually we may be required to try to turn to Florida for logs, but we haven't reached that point yet, however. If this freight rate were to be changed in the way the Georgia Public Service Commission has suggested I certainly would start buying logs right away in Florida, because we would have a rate we could operate on. We have [fol. 727] got logs enough to run on now, but we have not any big supply of timber. We are buying logs delivered, anywhere, from anybody that will sell logs (Tes. p. 468-469). Most of the desirable timber has been cut out of south Georgia. We have comparatively small mills there and are up against the problem of what we will do for logs and we are not shipping logs from Florida. If we had a rate equality we might produce them, certainly if we could get a rate to come into Valdosta—in other words, obliter-

ate the State line. The rate is all that is in the way. There is nothing else involved in that problem except the rate (Tes. p. 469). As to whether I could pay twelve dollars a car on your logs from Florida to Valdosta, with an outbound advantage of only two cents a hundred pounds on lumber, and compete with a nearer mill in Florida who does not transport logs at all, he would evidently have that advantage of us, but we could absorb that. If he has got an interior mill in Florida, he has got a higher rate to the eastern market, by one or two cents on lumber. Three cents on logs means ten cents on lumber, that is, I would have to have a rate which is on finished lumber equal to ten cents, before I could afford to pay three cents on logs, if you are figuring on somebody that don't have to haul logs at all, an interior mill located in the timber. I could compete with him and pay twelve dollars a car on logs, yes sir, we could absorb that. Twelve dollars on logs is the equivalent of forty dollars on lumber, and we would [fol. 728] have an advantage in rate, which brings it down to thirty or thirty-five dollars a car, and I think I could absorb that and stay in business at Valdosta. I have not attempted to operate a mill at any time, when all of my logs have had to come in by railroad for hauls of at least fifty miles, and from fifty miles up to one hundred, not that far. We have on a haul of thirty miles. I have never experimented with the effort to ship all my logs inbound by railroad and for hauls ranging from fifty to one hundred miles; it would be feasible to do that with a reasonable rate, yes. As to whether I could run a saw mill if I had to draw logs by railroad for distances of that kind day in and day out, well, it has been done in hardwood right along. Well, if it can be done in hardwood it can be done in pine. We have not found that there is a great difference in value.

This possible source of timber that I speak of in Florida would be made up of small tracts, I would say, scattered tracts. I don't know of any large tracts; the fact of the business, we have not spent any money looking around down there (Tes. p. 472). I have not had a scientific definite cruise made to see what timber would be available. I have never personally myself investigated the real conditions. My brother is the timber man and he is unfortunately sick and cannot be here today. As to whether or not it was

found to be feasible to attempt to acquire any timber lands [fol. 729] in Florida in view of the actual ownership, to run a saw mill as I want to run a saw mill—I have satisfied my mind about it and that it can be done; yes, sir.

The roofer end of our business does involve the shipments of logs. They go into logs just the same, that is, just the top logs, that is just the knotty logs, we ship in like the other (Tes. p. 473). We ship the whole thing in the roofer business; that is, we do not bring in the roofer material and dress it when we get it.

Now from my own definite personal knowledge, I have not been in a flooring mill and do not know whether there are any manufacturers of flooring in Florida. As to whether there is any manufacturer of flooring in Florida with whom I would have to compete, well, we meet up with Florida competition. Yes, they make—well, as I said, I haven't been in a mill, as you would want just a definite statement as to who or when. Yes, I do know of my own knowledge that there are manufacturers of flooring in Florida on the Atlantic Coast Line Railroad shipping logs to his mill under the Atlantic Coast Line freight rates in Florida. One is Wilson, Otwell & Kohn at Jacksonville. That is one plant I have been in. I didn't think of that a while ago (Tes. p. 475). I don't know whether that concern gets any logs to Jacksonville over the Atlantic Coast Line Railroad. In the matter of whether I could ship from Florida to Georgia or not, besides the freight rate the cost of the stumpage enters into it. We get up against that reason. [fol. 730] The cost of the stumpage would be the same as any we have investigated; it is about the same as it is in Georgia.

The source of my information from which I conclude that it might be possible to obtain some timber lands in Florida. I got it from my brother. He had been down there in some sections; yes, sir. He is not a cruiser, no. He is a good judge of timber, however. He was just scouting, I think.

"Q. Did you fear that that particular patch of timber would be purchased—gobbled up—by these Florida companies if you were to indicate where it is?"

"A. Well, I am not going to risk it."

I knew before I came into the hearing that I might be asked the question as to where the timber was that I was speaking of.

"Q. Did anybody tell you that you should not answer the question?"

"A. Well, I got that from the experience my brother had before."

I don't know who acquired that Epinger & Russell tract, but the agent of the man who sold it told me who got it, but I have forgotten. As to whether we just assumed that the parties to this case went out and bought 190 million feet of timber only because my brother disclosed that there was such a tract in Florida and that they never knew of that tract before, I don't know. We found it out. There wasn't any secrecy about it. As to what is the prevailing [fol. 731] price of stumpage in Georgia, that is like 'Haynes' Pickles, that is 57 varieties. (Tes. p. 478).

Redirect examination.

(By Mr. Perry:)

If a similar manufacturer in Florida ships to the same market that I ship to, I am of necessity in competition with that manufacturer. It is true, then, that if he has an advantage in freight rates, he makes that much more profit on a given bill than I make" (Tes. p. 479). Therefore it is true that if I compete with such a manufacturer, I would have to absorb this advantage that he has in freight rates. In reference to the question of absorption of $10 per car, referred to in cross-examination, I have an advantage by operating a band mill over a competitor who operates a circular mill. There is an economic saving in a band mill as compared with a circular mill that would amount to more than $10 per car. I operate a band mill (Tes. p. 480).

"Mr. Perry: Your Honor, that is all we have except rebuttal testimony we will offer at the proper time."

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J. L. White was thereupon recalled as a witness and, having been previously sworn, testified as follows (Tes. p. 481):

Cross-examination resumed.

(By Mr. Cotterill:)

Since the Valdosta hearing I have visited the terminals at Eastport. I did not go there with the object of checking and did not check the six hours' time as a factor in the cost study. I made no inquiries at all. I went out there to familiarize myself with the location. I had never been out to Eastport before. I had gotten my information as to the six-hour period from some one else. That is correct (Tes. p. 482). I did not have the opportunity to familiarize my- [fol. 732] self with the facts, because I did not go out there with a log train. I simply examined the tracks at Eastport. I will see if I can give you the information of the way in which I asked for the allowance which totalled six hours. Well, I don't see a letter here, Mr. Cotterill. It is possible I asked our superintendent of terminals here about it verbally; I don't recall. I asked him to let me know the time used by switch engines in handling the logs from Carbur and Perry. When I was out at Eastport I did not find any facts suggested to my mind I had allowed too much, but I made no particular examination (Tes. p. 483). I think that the switch locomotive performs other terminal services at Eastport than the switching of logs. I understand that the time that was given to me was the time that was used by that locomotive only in switching logs. It was exclusive of time used for other purposes. I reached that understanding from a talk with the superintendent of terminals here in Jacksonville. He has made a personal inspection himself many times (Tes. p. 484).

Included in the cost study there was not any item or allowance for solicitation and no items for delays other than by its proportional 27 per cent of all the expenses, total expenses under item I. Let we make sure of that (perusing papers). No, I am wrong about that; they are not included. I did not include any item of direct expense for solicitation.

"Q. Any item of direct expense encountered on your test movements owing to delays, it is understood that you took

[fol. 733] the train performance of certain test cars?" (Tes. p. 485).

"A. No, not certain test cars; all cars moved during September."

Included with that were extra expenses encountered irrespective of delays, by logs or any other reason, and I charged all of it to the cost of logs, necessarily (Tes. p. 486).

"Mr. Cotterill: We wish this record to show that we believe the motion to dismiss at the time it was filed was justified. We believe that the motion is as good now as it was then. We are going to go ahead and put in evidence in chief, without waiving our motion or any rights that we have previously acquired thereunder" (Tes. p. 487).

"Mr. Adair: Our understanding is any testimony we take is without prejudice to that motion. We so announce" (Tes. p. 488).

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Arthur G. Cummer was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Mitchell:)

[fol. 734] My name is Arthur G. Cummer. Manufacturer of pine and cypress lumber; representing the Cummer Lumber Company and the Cummer Cypress Company. I am president of both companies. The Cummer Lumber Company purchased timber lands in Baker, Alachua and Levy Counties, Florida, in 1889, and commenced the manufacture of this timber in 1897. The Cummer Cypress Company commenced the manufacture of cypress in 1911 (Tes. p. 488).

My grandfather and father had owned and operated saw mill plants in Michigan since 1870. Our companies have been operating plants in Cadillac, Michigan, since 1875, and manufacture there white pine, hemlock and hardwoods. As a matter of fact, our company, Cummer Diggins Company, are still operating a plant at Cadillac. I had experience in lumber manufacture in Michigan, and in 1895 and

early 1896 I spent twelve months in Norfolk, Virginia, where my father and associates owned and operated a saw mill plant manufacturing short leaf pine, which was handled to the mill by railroad from the company's timber holdings in North Carolina. Since 1896 I have been engaged in the manufacture of lumber in Florida. We located the manufacturing plant of the Cummer Lumber Company when we started operations in 1896 on the St. Johns River about six miles north of Jacksonville, Florida, on tidewater. A number of important items entered into the location of this plant, and the most careful consideration was given to this matter. Our experience in the manufacture of short [fol. 735] leaf pine in Norfolk, together with the experience of other manufacturers in that district, had demonstrated to us the necessity of shipping our product by vessel to the northern, eastern and export markets. We appreciated, moreover, that in the manufacture of our Florida long leaf pine it was necessary to locate our plant on tidewater in order to compete with mills in South Carolina and Georgia whose plants were so located as to permit the handling of logs into the mills by water, and/or to ship the product by vessel to the different markets.

The past history of the lumber industry will show that saw mills are located on rivers wherever possible, and this is especially true in the southeastern part of the United States; for instance, Norfolk and Portsmouth, Charleston, Georgetown, Wilmington, Savannah, Darien, Brunswick, St. Marys River, Jacksonville and St. Johns River, all of these places and the waterways on which they are located have for many years been important lumber manufacturing centers. Before locating on tidewater my father and I investigated these matters personally. We visited every plant of any size in Georgia and South Carolina, and carefully studied their facilities, and so forth. We found that, as a rule, the yellow pine timber in Georgia was of better size and quality and of a heavier yield per acre than our Florida holdings. We realized, moreover, that Georgia [fol. 736] had a great advantage over Florida from a geographical standpoint, due to the fact that it had many large rivers running into the Atlantic and extending generally east and west. The Savannah, Ogeechee, Camouchee, Pendleton, Altamaha, Oconee, Little Ocmulgee, Ocmulgee,

Satilla, Little Satilla, and St. Marys rivers were natural waterways and were used in getting logs from the forests to the saw mills located generally near the coast. It was our judgment in 1896 that it was necessary to locate our plant near tidewater in order to compete with these plants which, in addition to the great advantage of water transportation for their logs, had an additional advantage in ocean freight rates over Florida ports.

Yes, we investigated Fernandina very carefully. It had many advantages over Jacksonville, a fine harbor near the ocean, but we could not secure a site for our saw mill, and so selected Jacksonville. At that time all of our timber was west of Jacksonville and there was not a river extending from the Atlantic Ocean to the timber owned by our company. It was therefore necessary to handle our logs to our mill by railroad, but this was not a serious matter to us, for the reason that we had handled logs in Michigan in this manner, had operated our Norfolk plant for years on logs handled over the S. A. L. Railway from North Carolina points, and that prior to 1896, and in fact, after that time, there was a large saw mill in Jacksonville, The Bucky Company, which operated on logs coming from Bradford [fol. 737] County, over the F. C. & P. Railroad. We first got our logs over the F. C. & P. Railroad from a point a few miles west of Baldwin. We had a contract with this railroad to handle our logs in train lots of 20 cars minimum. Our Jacksonville mills were burned in 1899, and when we went to the F. C. & P. Railroad to tell them of our plan to rebuild, we were advised that the log rates would no longer hold. We immediately commenced the construction of the J. & S. W. Railroad, which ran from our plant in Jacksonville through our timber holdings in Duval, Baker, Bradford and Alachua Counties, to a short distance west of Newberry, Florida, a distance of some ninety miles. We completed this railroad in 1899 and commenced to operate our new saw mill in 1899. We owned and operated the J. & S. W. Railroad from 1899 to 1904. It was a profitable operation. The J. & S. W. Railroad charged our company a rate on logs (Tes. p. 492). We finally sold the J. & S. W. Railroad in 1903 to Mr. Charles W. Chase, of Gainesville, Florida, who was intimately associated with Mr. Walters and other Coast Line officials in the affairs of the Dutton

Phosphate Company. We sold the railroad because we are not railroad people and wished to confine our attention to our lumber interests. Mr. Chase offered us a fair price for the J. & S. W. Railroad and we were able to make arrangements with him by which our log rates were adequately protected. When I say our rates were protected I mean, sold to Mr. Chase on terms; a certain amount in cash, and the remainder in interest-bearing freight certificates redeemable [fol. 738] as payment of freight on logs in train lots at prices per car as stipulated in our contract for sales. As to how these contract log rates compared with those previously charged by the J. & S. W. R. R., they were 33 1/3 per cent higher, or using Baker County as a basis, the new rates were $8 per car, as against $6 per car (Tes. p. 493). I have a copy of our contract of sale with Mr. C. W. Chase of Gainesville, Florida, who represented the Coast Line in the matter.

(Thereupon three photostatic copies and two typewritten instruments were marked for identification Intervenor's Exhibits Nos. 26 to 30 inclusive.)

The rate I have mentioned is not the so-called Cummer scale. The present so-called Cummer scale is a much higher rate than set forth in our contract with Mr. Chase (Tes. p. 494). Mr. Chase operated the J. & S. W. Railway for about a year, retaining the old organization, and then transferred it to the Atlantic Coast Line Railroad.

As to how we operated under the Chase contract: Soon after the first of each month we were rendered a bill for the previous month log freight. We paid part cash and the balance in freight certificates. This method continued until 1909, when the Atlantic Coast Line wished to retire these obligations in order to perfect some new financing. We then permitted them to pay off all outstanding freight certificates held by our company.

These logs were handled by the J. S. & W. Railroad and later by the Atlantic Coast Line as follows: Sufficient cars were supplied so we could have enough equipment to operate the mills, a train of thirty cars would be loaded today in our woods and would be handled to our mills tonight; [fol. 739] it would be unloaded on our log trestle into our log boom tomorrow and the empty equipment sent back to

the woods tomorrow night. Our logging engines in the woods delivered the loaded log cars to the main line and handled the empties; the J. & S. W. Railroad or Coast Line Railroad did no switching, but merely furnished the motive power to handle the trains to and from the saw mill. The Cummer Lumber Company took care of all ordinary wear and tear of log cars and their equipment, and, as can be understood, gave prompt dispatch in the loading and unloading of the log trains. This train service was a regular and constant one, remarkably so. I have figures showing the number of cars handled each month from 1899 to 1916. These show a very uniform movement of log cars over the entire period. I have had these figures compiled in the form of an exhibit showing the movement of logs and freight paid in the operation of the Cummer Lumber Company mill at Milldale from September, 1899, to June, 1916, when the Cummer Lumber Company operation ceased. There is also attached to this exhibit a statement of the Cummer Lumber Company investment at Milldale (Exhibit No. 29). After the logs are manufactured, the heavier timber and plank was shipped either in our steamers or barges to our customers in the east, or by chartered schooners to the West Indies, Cuba, and other parts. We also shipped a considerable quantity by Clyde and Merchants & Miners steamers. Our dressed or finished lumber, prin-
[fol. 740] cipally boards, were either shipped by vessel or by rail, depending upon the location of the yards of the purchaser (Tes. p. 496). Our methods were practically the same as those of our competitors who were located on rivers, and so forth, in the Carolinas and Georgia, although they still had a decided advantage over us in the costs of getting logs to their mills. In short, handling logs by railroad is not as economical as handling logs by water, and this holds good all the more when the quality of the timber, yield per acre, and so forth, are in favor of the plant handling its logs by water.

Our investment in the Jacksonville plant is $1,250,721.11, and in the Lacooche plant $1,195,534.58. At Jacksonville we own very few homes for our employees, the plant being located near the city, we have encouraged our men to build and own their own homes. We employ 617 men in our Lacoochee saw mills, exclusive of our logging operations,

and 193 men in our Jacksonville box factory. We are still operating the Jacksonville plant, namely, the box or crate factory. The sawmill is leased to the Putnam Lumber Company, which company receives its logs by train from Dixie County in the same manner as logs were formerly delivered to the Cummer Lumber Company. These two mill operations for the period from 1899 to date constitute a continuous service over the Newberry division of the A. C. L. of log trains for a period of twenty-seven years (Tes. p. 497). I have reason to believe that the traffic agreement [fol. 741] as established in our contract with Mr. Chase, and afterwards adopted by the A. C. L. Railroad, was advantageous to the A. C. L. Railroad. In 1909 when the A. C. L. Railroad took up the freight certificates, Mr. Walters informed me by letter that this agreement was advantageous to the A. C. L. Railroad. I have a copy of this letter, Mr. Examiner. It is marked Exhibit No. 27.

We discontinued manufacturing and selling pine lumber at Jacksonville in 1916. Mr. Jackson has testified he operates a pine saw mill in Valdosta, Georgia, and that the Cummer Lumber Company is a competitor in the manufacture and sale of pine flooring. That is not a fact for the reason neither the Cummer Lumber Company or any other plant of the Cummer Lumber companies, have manufactured or sold pine flooring since 1916 (Tes. p. 498).

The Cummer Cypress Company is operating at the present time a saw mill plant at Lacoochee, Florida. The plant cuts about twenty million feet of lumber a year, and is located adjacent to one tract of timber containing about 268,000,000 feet of timber, which is brought in to the mill over its own logging railroad, and owns three other tracts of timber from which the timber is now, or will in the future, unless conditions change, be brought to the mill over the Atlantic Coast Line Railroad. One tract is located near Otter creek, contains about 23 million feet of timber, which is now being logged and shipped over the Atlantic Coast Line Railroad from Otter creek to Lacoochee. One tract is located near Homasassa, contains about 29,298,000 feet of timber, which it is the intention of the company to log [fol. 742] and ship over the Atlantic Coast Line Railroad from Homosassa to Lacoochee as soon as the logging operation at Otter creek is finished. There is another tract

on the Withlacoochee river containing about 74,860,000 feet of timber, which the company has intended to log and ship over the Atlantic Coast Line Railroad from a point near Inverness to Lacoochee. I have had prepared a statement showing the uncut timber, which will have to be transported by rail carriers to Lacoochee, the investment in the plant at Lacoochee, the number of employees, the average weekly payroll, and the number of houses owned by the company and occupied by employees and their families at Lacoochee (Exhibit No. 30). We have a contract with the A. C. L. Railroad for the transportation of logs from Otter Creek to Lacoochee. We are receiving about thirty cars every day by log train from Otter Creek over the Coast Line Railroad a distance of between 70 and 80 miles. I have here a copy of that contract, Exhibit No. 28. This log train service furnished our company is substantially of the same nature and under the same conditions as that furnished the Brooks Scanlon Corporation and the Putnam Lumber Company by the A. C. L. Railroad at Jacksonville.

A substantial increase in the log rates on the basis of the Alabama log scale over the present Florida rate would seriously affect our past and present plan for the utilization of our timber located at Otter Creek, Homosassa and Withlacoochee. We would probably abandon our present plan of bringing the logs over the A. C. L. Railroad to the mill [fol. 743] at Lacoochee, and consider the advisability of selling the timber, erecting a new mill, or putting in our own log road. Any of these plans would be a great additional expense or loss not contemplated at the time of constructing our plant at Lacoochee. At the time of erecting the Lacoochee plant in 1923 we believed the Florida log rate stabilized, and until the hearing in this case at Valdosta, were of belief that the established Florida log rate was satisfactory and compensatory to the Atlantic Coast Line Railroad. Any substantial decrease in the quantity of timber relied upon as available to the Lacoochee plant would mean a substantial loss in writing off the cost of the investment in the Lacoochee plant.

(Intervenors' exhibits Nos. 26 to 30, inclusive, were thereupon received in evidence.) (Tes. p. 502.)

Cross-examination.

(By Mr. Carl Davis:)

The Witness: Our concern has a contract with the Atlantic Coast Line Railroad at the present time. I don't remember the name of the exhibit. That is the Otter Creek to Lacoochee one (Exhibit No. 28). The contract which was made with Mr. Chase and assumed by the Coast Line Railroad has expired; yes, sir. The contract we have reference to is the one for hauling logs from Otter Creek to Lacoochee (Tes. p. 502). This contract made with Mr. Chase covered transportation from Duval, Baker and Bradford counties, and Alachau County, over the Jacksonville & S. W. [fol. 744] division to Milldale. The road that I referred to as the J. & S. W. Railroad is a road that was constructed by our concern and afterwards purchased by the Coast Line. That contract expired by limitation after 15 years. The letter which I referred to as having been written to me by Mr. Walters was written during the life of that contract. That contract has never been extended. At the present time we have no contract with the Coast Line covering rates. The only contract is this Lacoochee contract and that covers the movement of logs in trains at the current rate. That contract provides that we make up the train and deliver it to the Coast Line and the Coast Line delivers it to our mill and we take it at our mill, but at the tariff rate (Tes. p. 503).

This line that I referred to as the Jacksonville & Southwestern extended from Jacksonville to a few miles west of Newberry, Florida, about 90 miles. And we found it reasonably possible to handle logs to our mill at Jacksonville, taking the logs from the mill and moving them to Jacksonville and manufacturing them there. This that we had applied only to certain specific movements between those points named on the Jacksonville & Southwestern and not elsewhere on the Coast Line (Tes. p. 504).

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F. H. Wilson was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Osborne:)

[fol. 745] My name is F. H. Wilson. I reside at Palatka, Florida; and I am general manager of the Wilson Cypress Company, with headquarters at Palatka, Florida. The Wilson Cypress Company was incorporated under the laws of the State of Florida in 1891. I have been engaged in the lumber business since 1891 and with the Wilson Cypress Company during all of that time, with the exception of four years during which I was with the Florida Woodenware Company. The Wilson Cypress Company is engaged in the manufacture of cypress lumber (Tes. p. 505). It also manufactures shingles and laths. We are engaged exclusively in the manufacture of cypress lumber. We manufacture no other kind of lumber. The holdings of the Wilson Cypress Company, up to early 1900, were timber tracts located tributary to the St. Johns River. Since 1900 the company has purchased approximately 300,000,000 feet of cypress timber in Lafayette, Dixie and Taylor counties. We have but one plant, which is located at Palatka, Florida. Our logs have been drawn up until May, 1924, entirely from timber tributary to the St. Johns River, but since that date we have been getting approximately 70 per cent of our timber from Dixie County (Tes. p. 506). Prior to the time that we began cutting timber in Dixie, Lafayette and Taylor counties the amount of investment in the Wilson Cypress Company's plant and facilities at Palatka, Florida, was in round numbers $600,000. The Wilson Cypress Company purchased its holdings in Lafayette, Dixie and Taylor counties I think in the year 1903. We began cutting the [fol. 746] timber in those counties in May, 1924. Before we began cutting timber in those counties we found it necessary to increase the capacity of our plant at Palatka.

We made an investigation of the costs of establishing such a plant in one of the three counties named, bearing in mind the fact that we still had considerable standing timber located tributary to the St. Johns river and comparatively near our Palatka plant. After careful consideration of the existing freight rate on logs over the Atlantic Coast Line, we concluded that it would be more economical to increase our capacity at Palatka and move the logs over

the Atlantic Coast Line to that point, rather than build and operate an additional plant in the timber with a higher freight rate on the finished product. We increased our investment in the Palatka plant approximately a half million dollars. We would not have made this additional investment if we had not believed that the then existing freight rate on logs would be maintained. We have a contract with the Atlantic Coast Line covering the movement of logs from Dixie, Lafayette and Taylor counties, to Palatka. This first contract was dated December 1, 1923, which covered the movement of logs from Oldtown to Palatka and was on the basis of a car of 50,000 pounds. This contract provides for the payment of a proportional amount for tonnage in excess of 50,000 pounds. Our logs are transported over the Newberry and Perry divisions of the Atlantic Coast Line known as the Florida Southern branch, I believe it is (Tes. p. 508).

[fol. 747] Our contract calls for a train load of at least 30 cars per train every other day. We have run very little over the minimum of thirty cars, due largely to the fact that we have a constant supply of logs from the river, but as this nearby supply diminishes, we will, of necessity, be compelled to increase our loadings from these points in order to maintain the capacity of our plant. It is probable that a considerable increase will be instituted during the present year. The number of board feet carried per car has in the past averaged something over 4200. The last time we checked it up this average represented, in pounds, approximately sixty thousand. That is approximately 20 per cent in excess of the minimum load guaranteed under the contract. For use in this service we have about 100 cars equipped now (Tes. p. 509). These cars are equipped by the Wilson Cypress Company at a cost of (the first 73 cars that we had were bought through Mr. Foley) and I think at a cost of $100 a car for the equipment. We have been equipping with a different pocket lately, the cost running between $135 and $140 per car. I estimate the total investment in the plant at Palatka at approximately $1,100,000. This figure that I have given represents the actual cash investment. The appraised value of our plant at the present time would be in excess of this amount. In deciding to enlarge our plant at Palatka we relied upon the then existing

freight rate on logs in reaching our decision (Tes. p. 510). The freight rate was one of the controlling factors in our decision to enlarge our plant at Palatka rather than build one in the timber. As we had our plant at that time, we fig- [fol. 748] ured that we would have about fifteen years in which to depreciate our investment.

I attended the Valdosta hearing in this case in October, 1926, and I heard the reference made to the so-called Alabama-Georgia scale of logs. It is my recollection that the Alabama-Georgia scale is considerably higher than the present intrastate rate in Florida. It would not be possible for us to continue to operate our plant at Palatka and continue to move logs from our timber in Lafayette, Dixie and Taylor counties to our plant at Palatka under a materially increased freight rate. It would be impossible for us to operate under a material increase in rates. If such increased rates are ordered by the Interstate Commerce Commission, if we are not compelled to go out of business entirely, it will be necessary for us to move our plant from Palatka to the center of our standing timber (Tes. p. 511). Thereby the Wilson Cypress Company would be most adversely affected, because it would necessitate the outlay of an enormous sum to move our plant from Palatka to the timber, which would be a dead loss, and it would also necessitate disrupting our organization, formed and trained over a long period of years, and deprive us of our water rates and facilities. When this contract was made with the Atlantic Coast Line Railroad Company that company never did hesitate or protest about the measure of the log rates and I have always been under the impression that the Coast Line was glad to offer this rate and that it was one of the [fol. 749] best paying propositions they had in their line.

"Mr. Cotterill: If your Honor please, we are not compelled to do so, but are very glad to state that we are not interested in the question of the reasonableness of the interstate rate, directly or indirectly, at this time. We are not submitting any evidence which we shall rely upon as to the unreasonableness of the interstate rate" (Tes. p. 514).

The Atlantic Coast Line has never approached us with a proposition for abrogating this contract; it has never indicated a desire to do so. On the contrary, the last contract

for hauling logs under this rate was made in March, 1926, and became effective July 13, 1926. That is referred to and incorporated in the contract submitted.

[fol. 750] (Thereupon Intervenors' Exhibit No. 31, witness Wilson, was received in evidence.)

The Witness: The institution of this proceeding was the first intimation that I had that there was any dissatisfaction with the present Atlantic Coast Line log rate in the State of Florida. The service performed in the movement of logs from our place of cutting to the plant at Palatka is as follows: The Atlantic Coast Line delivers the empty cars on the delivery track at Hines, where our crew takes them, and takes them to the woods, loads them, and delivers them back to the receiving track at Hines in solid train loads, where the Atlantic Coast Line hooks onto them and hauls them to Palatka. The Coast Line performs no switching service at Hines. At Palatka, delivery is made in two shifts of fifteen cars each, necessitating only one movement (Tes. p. 516). Our company pays one-half of the inspection charges on these log cars at Hines, averaging about eighty dollars a month. We also pay for all repairs to cars while the cars are in our hands. All repairs generally known as "owner's defects," which are covered by M. C. B. rules, are also chargeable to our company.

I have no accurate figures on how much manufactured product is handled over water, but our estimate is that not more than 30 per cent of our output moves by water. It is not possible for us to receive logs over any other company than the Atlantic Coast Line from our timber in Dixie, Lafayette and Taylor counties.

We began operations in Florida in 1891. It was then [fol. 751] operated under the corporate name of Tilghman-Wilson Company, under which name we operated until 1894, when the name was changed to the Wilson Cypress Company.

These log trains move during the night time and not in the day time (Tes. p. 517). From my knowledge and experience in the cypress lumber business I can imagine no condition that would warrant the movement of cypress timber from Florida to Georgia under the present basis of rates or even lower rates (Tes. p. 517).

The approximate production of our plant at Palatka is about 33,000,000 feet a year. It was about 20,000,000 per year before the plant was enlarged.

Our contract with the Atlantic Coast Line required us to put up a bond to protect the railroad. A ten thousand dollar bond was required and has been put up. Our contract obligates our company to route our rail shipments of manufactured lumber over the Atlantic Coast Line, where the rates charged by the Atlantic Coast Line are not higher than competitive lines. From my general knowledge of the log movement over this particular branch of the Atlantic Coast Line Railroad I would say that the proportion of traffic represented by the log movement is 75 to 85 per cent (Tes. p. 518).

Our principal market for cypress lumber is the northeast Atlantic Coast from Baltimore to Portland, Maine. So far as I am informed we meet very little competition from Georgia mills. So far as I am informed, there is a cypress mill near Savannah, Georgia. There is also one at Albany, Georgia, that manufactures cypress lumber. Certainly, these mills, situated as they are, could not afford, under any rate adjustment, to transport logs from Florida to their [fol. 752] plants. Our principal competition is with Pacific Coast products.

I, along with several others engaged in the lumber service or business in Florida, had conferences with Mr. Delano and other officials of the Atlantic Coast Line in Mr. Delano's private car in the Jacksonville depot some time last summer, relative to the then pending case, now being heard. At that conference were Mr. Delano, Mr. C. McD. Davis and one other official whose name I do not recall, representing the railroad, and Mr. Coit, Mr. Waldo Cummer, Mr. Fleishel, Mr. Foley, and myself, representing the lumber interests. We discussed with the officials of the Atlantic Coast Line this case, and the purpose of this conference was to ascertain, if possible, the attitude of the Atlantic Coast Line with regard to this case. We discussed with the Atlantic Coast Line officials the reasonableness of the log rates under attack in this case. We discussed very freely with the officials of the Atlantic Coast Line the rates under attack. Mr. Fleishel and Mr. Foley went into the very seriousness of this proposed advance on rates, as well

as I can remember, and the Atlantic Coast Line officials, while they did not say anything definite as to just what their action would be, they gave us to believe they were going to do everything in their power to protect and justify the present rates. As I remember, they went so far as to state that they felt personally responsible for the location of the Carpenter-O'Brien plant at Eastport, now the Brooks-Scanlon plant, and they realized the fact that they did [fol. 753] locate at Eastport because of the rates they were able to get on logs from the Atlantic Coast Line; and, as already stated, they didn't come out and give us positive assurance, but we all felt they were going to do everything they could to protect the then present rates. We left the conference with the distinct impression that the Atlantic Coast Line would defend the so-called Cummer scale in its application to the log movements of the lumber interests represented at that conference.

I attended the Valdosta hearing and heard the testimony offered by the Atlantic Coast Line witnesses, Mr. White and Mr. Perrin.

I have had prepared in our office an exhibit showing the total capital asset of the Wilson Cypress Company as of January 31, 1926.

(Thereupon the statement referred to was marked Exhibit No. 32 and received in evidence.)

The first page shows the cypress timber standing in Dixie, Lafayette and Taylor Counties to be two hundred and fifty million feet, approximately, all owned by the Wilson Cypress Company. This page also shows the total number of employees of the company, 580; that the total population depending on this industry is 2,900.

Attached to my first exhibit was a map showing the situation at Hines with respect to the tracks, and this map reflects the situation as it is today at Hines.

My opinion, based on my experience as a practical lumber man, is that there is no condition that would warrant a movement of logs from Florida to Georgia (Tes. p. 522). [fol. 754] I do not know of any possible circumstance which now exists or which I can anticipate will exist in the lumber business that would cause or enable substantial shipments or movements of logs from Florida into Georgia. As

to what effect, if any, the supply of commercial timber in Florida has upon the movement or possible movement of logs from Florida into Georgia; to begin with, under present conditions the supplies of commercial timber in Florida are owned and being developed by existing lumber companies which have long since established costly mills in Florida, the capacities of which are adjusted to the quantity of timber owned. Therefore, if there were to be capitalists in Georgia having available to them resources for the acquisition of commercial timber supplies in Florida, they would be compelled to purchase from one or the other of the large companies now doing business in Florida, and, of course, that would mean purchasing the mills and all the equipment as well as the timber itself. That being done, it seems impossible to suppose that such a purchaser would dismantle or dispose of the Florida mill which he had already bought, and then construct a new one in Georgia. Assuming that one or more of the mills of the lumber interests in Florida were to burn, and the owners were willing to sell their timber, and there was a possible purchaser from Georgia to buy, and did buy such Florida timber, the kind and location of a new mill which such purchaser would construct would depend very largely upon the size of the tract of tim- [fol. 755] ber purchased. If the Georgia interests could acquire commercial timber supplies in Florida, and there was no mill owned by this Georgia interest, they would no doubt locate the mill in Florida. There is no commercial timber in Florida on the Atlantic Coast Line Railroad, close to any present or possible mill site on the Atlantic Coast Line Railroad in Georgia, that I know of. I shouldn't think in the location of a new mill Georgia interests would give serious consideration to building a mill in Georgia, regardless of the freight rate on logs. If we suppose there already existed in Georgia a mill large enough to accommodate timber holdings of the sizes prevailing in Florida, and which would have to be acquired, if any could be acquired at all, and that owing to a depletion of local sources of logs in Georgia, such mill was compelled either to close down or operate as best it could from log supplies obtained in Florida, it would be a pure speculation as to what might

be done under such circumstances. We know, however, that there is no such mill on the Atlantic Coast Line in Georgia at this time. In other words, the lumber mills in Georgia on the Atlantic Coast Line Railroad are comparatively small and could not possibly, or economically, attempt to handle any one of the larger timber tracts in Florida. The lumber intervenors in this case have mills in the vicinity of Jacksonville and Palatka, and transport logs by railroad under the so-called Cummer scale comparatively long [756] distances, and I will explain why a mill in Georgia could not do likewise if it had the Cummer scale on movements of logs from Florida to Georgia. It is true that there are mills in Eastport, Jacksonville and Palatka hauling logs on the Coast Line a considerable distance under the Cummer scale. This is due to the fact that the mills are already in existence at these points, namely, Jacksonville, Eastport, Palatka, and Lacoochee. The mills have been constructed a considerable length of time and were so constructed at a time when conditions were entirely dissimilar to those now in existence. Large amounts of money have been invested in these existing plants. As to how it happens that our company continues to operate at tidewater in view of the statement I have just made: The locations of these plants, where such investments were made, and have been continued, notwithstanding the disadvantages of being located so far away from the sources of timber supply, are, first, the location of the mills when constructed at tidewater, were thereby assured cheaper water transportation as well as cheaper rail transportation than now exists for the outbound products.

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Jacksonville, Florida, January 19, 1927.

F. H. Wilson was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination resumed.

(By Mr. Osborne:)

As to whether there is any body of cypress timber in the [fol. 757] northern part of Florida not owned by the Flor-

ida cypress mill operators that could, in my opinion, be logged profitably to any mill wherever situated, I do not know of any such body, no sir. I should say that practically all of the cypress timber in north Florida is now owned by the present operators operating in Florida; and the remaining part, if there is a small per cent of such timber, it is so scattered and so inaccessible, and in such small tracts, that the logging of it profitably, even on the Cummer scale, would be practically impossible.

The total freight paid by the Wilson Cypress to the Atlantic Coast Line Railroad for the month of September, 1926, on logs moved under our service contract with that railroad was $7,344.37 and the total number of feet of logs moved during that month 1,458,055 feet. Since the month of September we have increased the number of cars in each log train to approximately an average of 34 cars per train, which has increased our monthly production from Hines to 1,800,000 and put the freight up to approximately $8,000 a month.

In my exhibit 32, which sets forth the total capital assets of my company, I did not include any allowance for investment in cypress or timber holdings. This statement concerns merely the physical assets at our manufacturing plant and logging equipment. It does not include any item as to land holdings. And no timber rights (Tes. p. 530).

Cross-examination.

(By Mr. Perry:)

[fol. 758] The investigation which I have made that leads me to the conclusion that there is no timber in the territory I speak of in north Florida that would be desirable or profitable in being handled by some other mill, is the general observation that I have been able to gather from the various owners of the present holdings that have naturally taken up everything that they could possibly get hold of that was tributary to their holdings. I have not made any personal inspection of that territory. I have had occasion to go into our particular territory to see whether or not there was other timber desirable and bought all in our immediate territory and none was left for sale there that I know of. The territory I speak of does not cover north Florida, only

three counties. I am acquainted with Dixie, Lafayette and Taylor counties (Tes. p. 531). I am familiar with the territory 170 miles from Valdosta, Georgia, as covered by the Atlantic Coast Line Railroad, only in a general way. I have personal knowledge from information we have had from cruisers on different tracts. I wouldn't be interested in timber in that territory with our mill located where it is. Therefore, I am not concerned and have not made any investigation but stated what I understood from general information. But we consider it is right from the fact that we have been at considerable expense in going over the timber in a great many of these different counties, even up in Georgia, the southern part of Georgia. As to the pine timber in that section, all that I know about it is hearsay. I [fol. 759] haven't had the experience as to pine timber that I have as to the cypress timber. I only know about pine timber in that section in a general way. I know of the larger bodies; also it is pretty well cut out and held by big owners.

Albany could not under any circumstances be interested in these timber lands in Florida, because of the freight rate. I mean any freight rate. If they had an opportunity I don't know where they would be able to pick up a body of any size at all, that is, a body that would allow them to log it profitably and freight it to Albany (Tes. p. 533). It would not depend on the freight rate; not on the present Cummer rate; I don't think they could do it. I don't know the exact distance that would be, but of course, that would depend altogether on where the timber would be. It is a general conclusion of mine, it is a general observation, but I don't think I am wrong, though.

I have no objection to extending this Florida scale into Georgia (Tes. p. 534). As to whether it should be extended into Georgia if it is allowed to remain in Florida, I think it depends entirely on what there is to justify the establishment. The possibility of timber in sufficient bodies being purchased that would enable some mill to manufacture is a condition that would justify it. That would have to be in very large quantities, which, as I have already stated, do not exist. As to how much would be a reasonable amount of timber that would justify the extension of this rate into Valdosta, Ga., in a given tract within a distance of 175 miles

of Valdosta, I would say approximately a hundred or a hundred and twenty-five million feet. One hundred and ninety million feet would, then, be amply sufficient ac- [fol. 760] cording to my judgment to justify the extension of the Florida scale into Georgia, yes (Tes. p. 536).

(By Mr. Cotterill:)

"Q. Now, then, Mr. Wilson, I ask you whether or not, in any answer that you have given to the last four or five questions, did you intend, or not intend to leave the inference that even under the Cummer scale, as we are describing it, if it were effective from an origin in Florida to a destination in Georgia, and there were one hundred and ninety million feet of timber available in Florida, that even in that event did you intend to leave any impression as to whether, in your opinion, it would be practicable or feasible to transport logs from that one hundred and ninety million foot patch to a destination in Georgia under that scale?"

"A. I don't; no, sir. The extension of the Florida scale into Georgia is immaterial to me.

"Q. If you had a lumber interest at Valdosta, Georgia, a manufacturing plant in Valdosta, Georgia, and there was timber sufficiently near Valdosta, to make it attractive as a business proposition, and you would be allowed to draw that timber into your Valdosta mill, should you or not have a rate, interstate, that would make it possible for you to go to that and to put you on an equal footing with a competitor in Florida where the rate is lower?

"A. If I had a mill and a proposition of that kind in Valdosta of such capacity as the mills are in that part of the State, I wouldn't consider ever bringing the logs to Valdosta" (Tes. p. 539).

I would put the mill into the timber because it would be an economical way of manufacturing the timber regardless of any log rate; not because I had access to the Florida rate at Valdosta. As to whether the haul has anything to do with the purchase and disposition of lumber, that depends [fol. 761] altogether on the quantity, and the plant that is to manufacture that timber. As to whether a man can compete in the manufacture of lumber and pay the present

interstate rate Florida to Georgia, in competition with a man who is shipping his logs over the present log rate in Florida, that depends upon a great many things—the price of the stumpage. The question of freight rate does not enter into the cost of stumpage. I don't think that the [fol. 762] question of freight rate enters into the purchase price to be paid for stumpage. Whoever buys that has the privilege of manufacturing it on the ground, or if they choose to haul it to some other point, why that is also their privilege; but it has nothing, I should say any bearing, on the price of the stumpage. As to whether if you go into the timber to put in your mill and saw it, you have got an added freight rate in getting it away from there, that is not on the lumber, you may have an added freight rate, but it will be a good deal less than the freight rate on logs (Tes. p. 540).

"Q. Do I understand from your answers to the questions asked you a while ago as to a man paying the interstate freight rate from Florida to Georgia, as compared with a man who has the Florida rate, that it would make no difference if you were located a given distance from timber, if you are in competition with a man who has a half or a third of the freight rate that you have, it would make no difference to you in the results of your operation—if you were in competition with a man who was enjoying a freight rate a third as much as you are paying, would that or not affect your business?"

"A. It would no doubt affect it some, yes, sir."

"Q. Well, how much would it affect it—just the difference you pay and your competitor pays for the delivery of the logs?"

"A. Well, one might have an advantage over the other on the finished product."

"Q. Wouldn't that be entirely due to the logging cost?"

"A. Which is that, the difference?"

"Q. The difference, yes, sir."

"A. No, I say there might be an advantage in the freight on the finished product that would offset part of that logging cost."

[fol. 763] I heard Mr. Giddens or Davies—testimony as to the advantage that the Florida manufacturer has over the Georgia manufacturer, the intrastate rate in Florida on the

one hand, compared to the interstate rate on the other, was as much profit as he would care to make on his investment. I don't think he is right about it.

"Q. You don't think the advantage that the Florida manufacturer has is sufficient to justify a fair return on a fair investment,—a fair investment at a fair value?"

"A. I don't think there is anything to that, no, sir."

"Q. Now you stated yesterday afternoon, Mr. Wilson, that you made all of this investment on account of this rate that you enjoyed, and which you say is necessary to continue, otherwise your property would be confiscated; is that correct—or the word "confiscation" or "destruction"?"

"A. Well, it would be practically that; it would mean that we would have to move our present plant into the timber."

"Q. Why can't you operate your plant on the same rate that your competitor in Georgia operates on, interstate, if you have to move on that rate; why can't you do it?"

"A. It just can't be done; you can't pay a whole lot of additional freight and make any profit out of it."

"Q. You say the logging cost is a very small item that enters into it?"

"A. I beg your pardon. I did not" (Tes. p. 542).

I said the logging cost was very small. The rate on logs has never been given consideration when I went to buy any stumpage that I know of. The question of freight rates does not enter into the price I pay for stumpage. As to whether that is because the rate is uniform where we go from our mill, that is not the reason for it; that does not [fol. 764] enter into it; we buy at various places all over the State. We consider the freight rate on logs in getting our logs into the mill, absolutely. If we enjoy a rate a third of what our competitor pays, we have an advantage over him in the market, yes. As to whether I think we ought to have it, I think we ought to have a rate that we can at least show some little profit (Tes. p. 543). If we were to have to pay [fol. 765] a higher rate or give up these rates that are referred to as being preferential or discriminatory, it would work a destruction of our property and we would have to dismantle the plant here, there, or elsewhere, or certain portions of it; yes, sir.

"Q. Now, with your knowledge at the time you made the investment, with the condition in the contract that it is to be terminated on thirty days written notice, don't you think you took a long chance in making this hazardous investment, as it appeared to be?"

"A. We undoubtedly did, yes, sir."

"Q. That contract can be terminated at any time on thirty days written notice?

"A. Yes."

"Q. So, after all, Mr. Wilson, are the facts these: that you have got a distinct advantage in freight rates over various competitors and you want to continue to enjoy it; isn't that true?"

"A. I don't know who those competitors are, no, sir" (Tes. p. 544).

We don't consider the Bray Lumber Company at Valdosta or any lumber company at Valdosta as competitors. They don't enter into competition with us; that is, so far as we know.

"Q. I will ask you this; is it an admitted fact that you have a distinct advantage in freight rates in Florida?"

"Mr. Cotterill: Mr. Perry, when you use the word "advantage," I don't know whether the purpose is shown and by that you mean that there is no more than a difference in the mileage scale between Florida and Georgia, or a mileage scale in Florida, or whether you have a technical purpose in mind and are seeking by this witness to show there is an advantage that he wants to make on logs. Now, when you use the word "advantage," I am compelled to ask that the witness be not required to answer until he is made [fol. 766] to understand whether counsel means there is a difference only in the sense of those two mileage scales, or whether he is using the word "advantage" in an important legal sense, in a commercially hurtful sense."

"Exam. Brown: You are not using the word "advantage" in a legal sense, are you Mr. Perry?"

"Mr. Perry: No, sir. Between the two freight rates as reflected and the only two that are reflected here."

"Mr. Cotterill: To ask this witness if there is any difference between the two mileage scales is simply to take up time."

"Q. Mr. Wilson, you have an advantage in your freight rate, compared to freight rates in the territory generally contiguous to Florida, haven't you?

"A. You mean outside of Florida?"

"Q. Yes, sir."

"A. Yes, we have. We have not an advantage over our competitors, though, in freight rates."

"Q. Well, it is a question of who your competitors are, isn't it?"

"A. Yes, sir."

We hope to continue to enjoy the rate in existence (Tes. pp. 546, 457).

I do not consider Reynolds Brothers at Albany, Georgia, competitors of ours. We don't sell in the same market. Well, I won't say that. I don't know where they sell. We sell in the northeastern estates from Baltimore to Portland. I am not acquainted with their operations at Albany and do not know where they sell. I reach the conclusion that they are not competitors because we never hear of them—we never hear of any competition from them (Tes. [fol. 767] p. 547). There is no reason why they cannot compete. I don't know as we have an advantage over the rates they pay. I don't know as they are logging in Florida at all. They may have some logs that we don't know. I should not think they could log in Florida under the same rates we have, no sir.

"Q. This much more as to the question of contract, and to get it clear: If this contract that you have, providing for this thirty days written notice, the termination of it on thirty days written notice was put in there, as it was, for the only purpose that it could have been put in, is it or not true, Mr. Wilson, that the question of the freight rates has very little to do with the future operations of your plant where they are now?"

"A. It is not true, no, sir" (Tes. pp. 548, 549).

As to whether I am firm of the conviction that an increase in rates would put us out of business,—it would compel us to move our plant from Palatka to some point near the timber after we had finished logging what timber we have tributary to St. Johns River. The farthest distance we are drawing logs at this time to our Palatka mill is 120

miles from Hines (Tes. p. 549). We do that profitably, yes. As to whether we could haul them profitably under our present rate 170 miles, I don't know what the rate for 170 miles is.

Our contract does not fix any rate. We have not any contract with the Atlantic Coast Line that does fix any rate. I don't think we have ever had any such contract, no. The thirty-day contract simply provides for service under the existing tariff rate. Our mill at Palatka does not draw logs from any other line than the Atlantic Coast Line. Our company has a mill only at Palatka.

The certain capital items which I said were not included in the capital assets in my exhibit No. 32 is simply what we call capital assets or our plant equipment and log equipment and autos and trucks, etc. We don't consider our [fol. 768] timber and lands as part of our capital assets. The approximate value of the standing timber in these three counties referred to in my exhibit, Dixie, Lafayette and Taylor counties, would run in round figures I should say practically three million dollars (Tes. pp. 550 and 551). The basis for the statement that a population of 2,900 is dependent upon the industry is based upon five to an employee, a family of five. I stated that I am not interested one way or the other in the extension of he Florida intrastate rate to apply to interstate commerce between Florida and Georgia. If the Florida intrastate rate were extended interstate into Georgia in my opinion there would not be any effect upon our industry with respect to competition which might be created by the lower rate which Georgia would then have. We don't fear the competition which would be effective if they got the lower rate because of the fact I know of no timber that could be purchased that would make an effect (Tes. p. 551).

Redirect examination.

(By Mr. Osborne:)

My company does not come into competition with any of these mills at Valdosta and Climax, Georgia. I can't see where there would be any practicable factor that would permit these Georgia mills to come into Florida and draw logs from Florida on the so-called Cummer scale and at any

margin of profit to those mills. It seems to me the only profitable way that scattering tracts of that kind might be operated would be with portable mills. In my opinion the [fol. 769] difference between the present interstate rate and the so-called Cummer scale does not prohibit these Georgia mills from coming into Florida. Our finished product of manufactured lumber moves probably 30 per cent by water, by schooner; and the remaining by rail (Tes. p. 552). We make some of our outbound shipments by water to the eastern ports. The fact that our mill is located on tidewater is one of the principal reasons why we are enabled to draw our logs from Hines a distance of 120 miles and operate at a measure of profit, the fact that we have the advantage of the schooner rates as compared to rail rates.

Recross-examination.

(By Mr. Perry:)

I do not know of any manufacturers of pine lumber in Florida that are in a position to draw logs from points within 170 miles of Valdosta on the Atlantic Coast Line Railroad. No, sir, I do not. A Jacksonville mill would not be interested in logs in that territory nor anyone else that I know of. As to whether there are any mills within the northern part of Florida sawing pine lumber on the Atlantic Coast Line Railroad, there are mills in Jacksonville, but I don't know how far Jacksonville is from Valdosta.

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D. W. KEENE was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

D. W. Keene. I am a yard conductor on the Atlantic [fol. 770] Coast Line Railroad. I work in C yard, from C yard in Jacksonville to Eastport, to Milldale and Eastport. My duties as yard foreman are to place cars and carry trains, and my principal duty is to handle log trains, full and empty, to Brooks & Scanlon. The switching locomotive

[fol. 771] and crew first get hold of the log trains at two places. Sometimes we take them at Kings Road yard four miles from Milldale, but generally we get them at Milldale. I can carry them to Eastport. Then we bring all empties from Kings Road yard (Tes. p. 555-556). There is a different movement on empties from the loaded cars. The loaded cars generally go to Eastport with the train crew and the others go to Milldale. These crews work in eight-hour shifts. That is their minimum day, but we work longer than that on the job. That is not every day, no, sir. Some days are longer than others. According to the way I figure my time, we make about nine hours a day. At times we work longer and some days we don't work but the eight hours. When the switching locomotive and crew takes hold of the log train and takes it out to the mill it weighs it at the mill. Then he takes a transfer and brings it back to Milldale.

I guess those mills make lumber; from the looks of them they make a whole lot of it. They have to switch the lumber out of the mills. The Eastport crew does the lumber switching; not the same one that brings in the logs. The Brooks-Scanlon people have their own engine at the mill. I do the transferring of the lumber myself, or whoever is foreman of the engine. A good deal of saw dust accumulates out there at the mill. The saw dust has to be moved around and disposed of and they ship lots of carloads of it. Whoever is on the crew handles that.

I keep a right exact record of what I do and the time it takes to do it out there (Tes. p. 557). About two-thirds now [fol. 772] of my time is consumed with that business, the total time the locomotive and crew operates in connection with the work it does on that Eastport business. That is two-thirds of the standard eight-hour day. Well now, I mean of my day. One day I might put in fourteen hours and tomorrow I might put in but eight, but if it goes over the standard you don't get your empties away from there. I mean two-thirds of a working day. Assuming a working day of eight hours, a total of that eight hours devoted to the business of the company is about two-thirds (Tes. p. 558). In the two-thirds of the eight-hour day we do no more than handling logs, and making up our trains, you have to make your trains up. That sawdust transfer comes over to Milldale; I bring that over to Milldale, and the lumber, that

comes to Milldale. We do not do those additional things in that period of five of the eight hours. You are getting wrong now about that period. I repeat, that from the time I go on the job until the time that log train is delivered, [fol. 773] then I keep that. From the time I report there back for the empties until I get in, is devoted to Brooks-Scanlon. Now I ain't counting this other third of a day in handling that stuff that comes away from there.

The starting time is 8:15 (Tes. p. 559). The first thing I do I get hold of the log train at C yard at 8:15; go to Milldale and catch a train and get over there about 10:30 or 11 o'clock, and then weigh the train; it takes about 45 minutes to weigh 45 carloads. Then I have a transfer there already made up of lumber from the mill; I take that and bring it back to Milldale. That takes about 25 or 30 minutes to bring it over there. That is lumber and sawdust. And I stay there until about 2 o'clock or 1:45. Then I work other industries; then I work the Standard Turpentine or the Florida Wood (Tes. p. 560). That is after I get back from Milldale; then I leave that, I don't handle that any more. I don't do anything more for the lumber company until I leave there again. Then I start back generally at 1:45 or 2 o'clock that afternooon. After 2 o'clock take some empty box cars over there for them to load. It takes about 25 minutes to run over there with ten or twelve box cars. If you have got flats on that road, we get them and turn them over to the inspector. You have to make up a train. It will take about an hour, probably, to switch the 'bad orders' out and get them next to the engine; and you have got to leave there by not later than 2:50 or 2:45 to get in on your eight hours; it may run more (Tes. p. 561). It takes about [fol. 774] an hour and a half or forty-five minutes to go from Eastport to Kings Road. It is about 12 miles. It takes more than an hour and a half for a switch engine to run about 12 miles. You have to go up there; you carry them up in Kings Road yard and carry your bad orders and carry them into the rip track. You have got the bad orders next to your engine. You have got to take them into the yard. That hour and a half it takes us from Eastport to Kings Road is nearly all running time except when you stop to take water. Twelve miles is all. Yes, sir, I can walk nearly that fast (Tes. p. 562).

I get out to the plant about 10 or 10:30 or 11 o'clock. I don't know exactly how far it is from Milldale; it might be some six or seven miles. Sometimes it does not take two and a half hours to go six or seven miles. I have had it to take me two hours and a half. That is not generally the case every day. I have had two hours and a half going from Milldale to Eastport. In the ordinary day it will take you about an hour and ten minutes (Tes. p. 563). It takes about an hour and ten or fifteen minutes to go that six miles with a train of logs. As to what else I do in that hour and ten minutes besides take the log train, I do not handle any other freight at all, no cotton for anybody, no. We don't pick up any and don't set off any. It takes an hour and ten minutes to go that six miles because you have to cross drawbridges and reduce speed and slack up for crossings. There is a whole lot where you can't run at railroad speed. [fol. 775] I do not say there is 25 crossings from Milldale to Eastport. I don't know as we go through there; we cross Pearl Street and there is only four of these that have to be flagged, you have got to absolutely come to a stop, and then you cross a railroad crossing, the Seaboard, and they have an interlocking plant there, and it may take longer to get through that; that is another stop (Tes. p. 564). Six miles in an hour and a half wouldn't be very much slow walking for me. I would have to spin it up pretty peart to go six miles in an hour and a half. I first said I got out to the plant at 10:30 or 11:00 o'clock in the morning. As to whether it took me two hours and three-quarters to get out [fol. 776] there, well, when I start to work, I have got three pickups to get them logs together. Then before you start it takes thirty minutes for an engine to pump the air up on forty-five cars, before you can ever start of course. That all comes in your work, too. We never get there earlier than 10 o'clock or a little after ten o'clock (Tes. p. 565). Oh, I couldn't tell you the length of haul that is involved in these transfers of lumber and sawdust. The most of it is just shipments right around the city here. I don't bring the lumber any further than Milldale. That is about six miles. It is four or five or six miles. I don't know how far it is. To get back to Milldale it takes about 25 or 30 minutes from the time we leave there and get the air up to run it. You have got no load then. To couple up and start it takes 25

or 30 minutes; it will average about 30 minutes. It takes about 30 minutes to go back that six miles after you have your air and are ready to go (Tes. p. 566). It takes you about 30 minutes to get your air, couple on those cars. Now one time I may be light, and the next time I have got a drag an engine can't hardly pull, when I come away from there with 45 cars of logs. I shouldn't think there would be any difficulty for a switching engine to carry the logs over five miles an hour unless you get out of steam, your engine is working all the time and once in a while you have to stop; I believe that an engine could run at twenty miles. The figures I gave are three miles an hour, at the speed we are getting.

[fol. 777] "Q. What else do you do besides getting the air between 8:15 in the morning and 10:20 or 11 in the afternoon, other than moving the train out?"

"A. What do I do all day, you mean?"

"Q. No."

"A. Going after that train."

"Q. You see, we have got a six mile haul in the morning, and you say that takes you two hours and a half to two hours and three-quarters, of which thirty minutes is used in getting your air?"

"A. You have got to go over there; it takes you about forty or forty-five minutes to weigh those cars after you get over there, and it is not delivered until it is weighed."

"Q. All right. That is forty-five minutes for weighing; we have got that. That accounts for one hour and fifteen minutes out of two hours and a half, leaving an hour and fifteen minutes in that direction for a six mile haul, and in the other direction, I think you said, twenty-five or thirty minutes?"

"A. About thirty minutes."

"Q. Now, why does it take you thirty minutes in one direction, and an hour and fifteen minutes in the other direction for the same distance between the same points? Is that due to the fact that one train is logs and the other is lumber?"

"A. One train you have got cars coming back, and the other you haven't; you have got a number of cars,—you haven't got the number of cars and you haven't got the

load, transfers—transfers aint over eighteen cars, fifteen or ten."

Cross-examination.

(By Mr. Carl Davis:)

I have worked for the Coast Line I would say something about a little over forty years. This button that I am wearing was given me for 25 years' service. Taking it by and large, my average day is about nine hours, and that the [fol. 778] time I devote to the handling of these log trains is about two thirds of the time (Tes. p. 569).

Redirect examination.

(By Mr. Cotterill:)

The reason why we have to exceed an eight hour day on the average is because over at the mill by not having the logs unloaded, there is generally a delay. After I get over there I have to wait for the logs—the empties; they unload the log train and I have to wait to get the empties to go back to the woods. That's the last thing I do in the day; when I get the empties. When I get the log cars loaded, there is nothing in those trains besides logs.

(Witness excused.) (Tes. p. 570.)

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T. W. Hansell was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

I am superintendent of terminals of the Atlantic Coast Line at Jacksonville, Florida, and have been there the last time eight years; previous to that, six years and a half; a total of 14½ years. I am familiar with the movement in connection with log trains handled over that Jacksonville & Southwestern. The engine in the morning starts at the shop, which is adjacent to C yard, and goes out from there on the main line through the interlocking plant at Moncrief,

[fol. 779] and then to Milldale ordinarily. It is about five or six miles from the starting point to Milldale (Tes. p. 571). The crew reports for duty at 8.15 A. M. It takes the engineer from eight to fifteen minutes to examine his engine, to know that he has the necessary supplies, tools and equipment, and oil up around, and leave. He proceeds to the Moncrief interlocking plant, over which there are hundreds of movements per day. Sometimes he is fortunate to get through that interlocking plant without delay because of no other trains being there at that particular time; at other times there are one or more trains ahead of him, he is delayed from ten to twenty or thirty minutes, and occasionally longer than thirty minutes, getting through the interlocking plant, enroute to Milldale. He proceeds to Milldale, where he finds his log train on two tracks, because it is too long for any one track at Milldale.

If there by no delay at all, which rarely occurs, it takes about 20 minutes to get to Milldale.

He doubles the two cuts at Milldale together, coupling the air, the car inspector inspects the air, and, if everything is O. K., he proceeds to Eastport. With some of our engines he can run it in forty or forty-five minutes; with others in an hour to an hour and a half, depending upon the condition of the engine he has on this particular day. On arriving at Eastport he weighs those logs, which consumes from forty minutes to an hour, depending on how [fol. 780] fortunate he is in getting the cars uncoupled and so on. And then turns the train over to the Brooks Scanlon engine. He then takes a transfer of probably from eighteen to twenty cars which they have prepared for him, consisting of the outbound loads of lumber and saw dust, and occasionally some empty cars that they don't need, and returns to Milldale with those cars. Then he works the plant of the Florida Wood Products, and the Arnold, Stone & Pyle Company, the Norwood Lumber Company, and two freight tracks, consuming forty-five minutes to two hours, depending on the amount of switching he has, which varies materially. Then he comes back to Milldale, and there he picks up the empties which have been ordered by the Brooks Scanlon Corporation on the previous day for that day's business, consisting of from eight to twenty-five, I should say, varying from eight to twenty-five cars, carries

them to Eastport, and delivers them to the Brooks Scanlon Corporation. Then he gets the empty log train together and has an inspector to go over it. Such cars as are not suitable for return to the logging camps are switched out and placed next to his engine. Then he proceeds to Moncrief interlocking plant and gets over it as quickly as he can, sometimes immediately, and sometimes ten, twenty or thirty minutes, and occasionally a little longer; goes over to what is known as Grant Crossing, the Kings Road siding —there are three of them there. There he sets out the good order log cars. When he has done that, he proceeds [fol. 781] back to the main yard, known as C yard, and gets rid of these bad order cars in the bad order track. Then carries his engine to the shop, the point from which he has started, and he has completed his day's operation, which usually will average, I should say, nine hours per day. Some days it will run as high as fourteen hours; on others he will complete it in seven, eight, nine, ten, eleven or twelve, but the average is nine hours.

It is sometimes necessary in the morning for him to go not straight from C yard to Milldale, but to go up to Kings Crossing yard. It is quite a long run from Perry and Carbur, both, from Milldale; if you have any trouble with the engine, or if the crew are on short time, they set the crew off at these three stations I have previously named, which are southwest of Moncrief. Then he goes up through the interlocking plant to the left instead of the right, a practically opposite direction from Milldale, a distance of about a mile. There he picks up this log train which has been set off by the main line crew, and again gets through the interlocking plant, being subject to the delays incident to a busy interlocking plant, and goes through the program which I have previously outlined.

Some of the activities which I have described here might possibly be described as ordinary plant switching, all of it except the handling of the log trains and empties. There should be deducted from this nine-hour day, as near as I can estimate it from watching it for a good many years, [fol. 782] about one third of the day's work. A part of that, however, is incident to the operation that the lumber company at Eastport, their business—but it is not entirely

and solely due to handling the log train and its empty cars. Two thirds of the day is properly assignable to the handling of the log trains as nearly as I can figure it by watching it for about eight years.

Cross Examination.

(By Mr. Cotterill:)

As to whether, if two thirds of the day assigned by me to all of the operations of the switching crew in behalf of the company we are speaking of, that leaves one third of the day which is employed in the service of those other companies I have named,—no; a good part of that one-third which is not devoted exclusively to handling log trains and these empty cars, is also devoted to handling business of the Brooks-Scanlon Corporation, some part of it. As to what these locomotives and crews do for these other companies than Brooks Scanlon, it takes loads to those plants that I mentioned and brings out such empties as are ready to leave and such loads as they may have to move out. They do not get the empties for these plants; they are brought to Milldale by another engine. They are [fol. 783] spotted by this engine, but are brought to Milldale by another engine (Tes. p. 576). Those plants are about a mile from Milldale and this switching locomotive and crew spots the empties and pulls the loads. They switch each plant once a day; as to how many plants there are, there is one, the National Turpentine Products Company, that does a good deal of business and they handle many cars for them; the others are small and won't have but a car a day or probably two. This switching locomotive has to go from Milldale out to all three of these plants and in addition it spots the empties and loads as well and brings them back to Milldale. Our Milldale switch engine carries them from Milldale to the main line (Tes. p. 577). That is not used at all in connection with Brooks-Scanlon except to haul the empties to and from Milldale and the outbound loads away from Milldale. Of that one-third of a day, even a part of that is devoted to service for the Brooks-Scanlon Company, I should say one hour, roughly speaking. I should say hat all of that switching for three other companies a mile away from Milldale is accomplished

within a two-hour period easily, sometimes less. The reason why it takes so little time to do all that switching for three other companies, and yet we put in seven hours for [fol. 784] Brooks-Scanlon, is because they do so much more business than all the other companies put together. If there were no Brooks-Scanlon Company at all that switching locomotive and crew would not start out in the morning at all. We would not do it. The Milldale engine would do the switching for the three other companies. It does it occasionally when the other train is late (Tes. p. 578). The Milldale engine starts from the Moncrief shop.

I have charged all of the dead time of this switching locomotive in getting from its starting point in the morning out to Milldale to the log traffic alone because that is what he is engaged in. If there were no log traffic this locomotive would not have to do the same thing for the three other companies; not this one, but some other locomotive would; and this other locomotive, while starting out from Moncrief, would go from Moncrief to Milldale, and at Milldale perform the switching for those three companies, and for a good many others too (Tes. p. 579).

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M. L. FLEISHEL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Adair:)

My name is M. L. Fleishel; president of the Putnam Lumber Company, Jacksonville, Florida. I have been connected with the Putnam Lumber Company ever since they started operating in 1918. Their business is manufacturing pine and cypress lumber at Jacksonville, and they have been engaged in that business since the 1st of January, [fol. 785] 1919. Prior to that time I was general manager of the Brooks-Scanlon Company, which was at that time the Carpenter-O'Brien Lumber Company previously (Tes. p. 580). They are engaged in the business of pine lumber nearby Jacksonville. My connection there continued from 1913 to 1919, from their beginning.

The Putnam Lumber Company has timber holdings in Florida, located in Dixie, Taylor, Lafayette and Volusia and Flagler counties. The approximate extent of the holdings is something over a billion feet of pine and cypress. The Putnam Lumber Company timber was purchased by Mr. William O'Brien and his associates back in 1900. At that time Mr. O'Brien was president of the Carpenter-O'Brien Company, and the largest stockholder. I know something of the timber holdings of the Carpenter-O'Brien Company, now Brooks-Scanlon Company. They had no relation one to another at the time that the Putnam Lumber Company acquired its timber about 1900. When we first started operating, the holdings of the Brooks-Scanlon Company were located in Jefferson, Madison, Taylor, Lafayette, and a little in Alachua counties.

As to when the Carpenter-O'Brien timber was acquired: There were three or four holding companies prior to the organization of the Carpenter-O'Brien Company; one company was known as the Gulf Land Company (Tes. p. 582). The same group of men that afterwards owned the Carpenter-O'Brien Company were interested in that. The Gulf Land Company then purchased from the Southern Timber [fol. 786] & Naval Stores Company and the McNair & Wade Land Company and the La Cross Investment Company substantially 400,000 acres of timber—something over that; and that timber was all put into what is known as the Gulf Land Company. The Gulf Land Company was then—all of the holdings of the Gulf Land Company were then put into what was known as the Carpenter-O'Brien Company. The Carpenter-O'Brien Company when it was first organized consisted largely of William O'Brien, E. B. Putnam, George C. Howe, L. P. Piper, Edward F. Swift, A. J. Lammers, and several smaller ones. Quite a few of them were the parties principally interested in the Pútnam Lumber Company; some of them were not interested in the Putnam, but three or four of the larger stockholders in the other group were also stockholders in the Putnam Company. There was substantial interlocking control. It was entirely under the control of the same men (Tes. p. 583). Included in those various purchases in the aggregate were something over three billion feet. Included in that also was what was known as the O'Brien-Irwin tract of timber, which

is now a part of the Brooks-Scanlon Company's holdings that we sold them several years later. In addition to that I want to qualify it—one other man I should have put in there was W. L. Roach. The Putnam Lumber Company and the Brooks-Scanlon Company have since taken all of the holdings of all of that group since the Standard Lumber Company—Mr. Roach—who was at that time president of the Standard Lumber Company—was also a substantial [fol. 787] stockholder in the Musser Estate in the Carpenter-O'Brien Company. I will give you the circumstances surrounding those purchases historically.

In 1912 S. J. Carpenter and myself were in Louisiana and we had already bought something over one hundred thousand acres of timber on St. Andrews Bay. About that time, this group of men who were trying to get all of these properties together, approached us with a view to coming over here and merging all of the interests above referred to into one big corporation for building three or four big saw mills at Jacksonville or Fernandina, somewhere on tidewater. We undertook to do that. Mr. Carpenter and myself sold out our holdings on St. Andrews Bay, came over here, and undertook to—largely under the domination of William O'Brien—to put all of these properties into one big holding company. When we started out to do that, the O'Brien Lumber Company and the Putnam Lumber Company's holdings had no mortgage whatever on the property, it was all free. All of these other companies had very substantial underlying mortgages against them; and, being unable to get rid of these liens, Mr. O'Brien was never willing to put them into one company. So the plans were changed somewhat, and the holdings that were then known as the Southern Timber & Naval Stores Company, the McNair & Wade Land Company and the La Cross Investment Company, were put into a corporation known as the Carpenter-O'Brien Company, and they assumed all of [fol. 788] the indebtedness of those holdings. We then looked over the territory pretty carefully, with a view to locating saw mills on tidewater. At that time there was substantially a five or six cent per hundred freight differential in favor of Jacksonville over locations in the woods by reason of what was known as a water competitive freight rate on lumber. We surveyed out the whole terri-

tory, and had about reached the conclusion that we would buy what was known then as the Florida Railroad, which was then operating from Perry, Florida, to Live Oak, Florida, owned a right-of-way, and had built the grade substantially from Live Oak almost to the city limits of Jacksonville, in addition to which they owned a right-of-way from that point on into Fernandina. The port charges at Fernandina and the cost of towing vessels in and out was substantially less than it was in Jacksonville and is now in Jacksonville. We had almost concluded to locate the plant in Fernandina and buy that railroad, when we got into negotiations with the Atlantic Coast Line officials, Mr. Walters, Mr. Delano and Mr. Menzies and several more of them came down here, and we had conferences in Chicago. They at that time had a railroad running from Newberry to Perry which had three or four box cars leaving here in the morning and coming back in the morning; I think there was one engine on the railroad. All of that territory west from Live Oak almost to Tallahassee was controlled by this group of men—certainly all of the timber that was in it that amounted to anything. Very naturally, if they [fol. 789] had bought this Florida Railroad they would have made a heavier railroad out of it; and if they had gone into the operating business they would have not only dominated the—all of the outbound business, but they would have dominated all of the inbound business; there would have been absolutely nothing left of that railroad but between there and Perry. Of course, they realized that, and the railroad brought to our attention what is known as the Cummer scale was then in effect, and they thought we could afford to pay that rate rather than build that railroad. We told them, after we figured over it a good deal, that we probably could. Our railroad practically paralleled that for a distance of sixty or seventy-five miles. This other railroad was in the process of being wrecked and could have been bought for almost a song. And we finally agreed with the Coast Line if they would publish that rate and furnish certain equipment in the way of log cars that we would consider it. We picked out several locations between Jacksonville and the mouth of the St. Johns river, and Mr. Walters came down here and we made a trip on a tug boat down the river and showed him two or three pieces of prop-

erty that we had under option; and we finally purchased the property that is now known as Eastport; the Coast Line agreed with us they would extend that line to Eastport. They drew our attention to the fact that that would mean the construction of two steel draw-bridges across navigable streams; but in any event they induced us to build that plant at Eastport and agreeing to extend the line out there. [fol. 790] We were faced then with a problem of a big investment and a lot of interest and taxes going on, and we couldn't wait for the Coast Line to build that railroad and put in the two steel draw-bridges and get the War Department permits and all of the red tape it was necessary to go through with. In the meantime we had been dickering with the Seaboard Air Line. So we finally made an agreement with the Atlantic Coast Line that we would pay for the construction of a railroad from their main line into the plant, in consideration of this inbound material. But in consideration of the inbound tonnage that they would get, they finally paid for most of it; but our contract with the Coast Line provided they would have all of the inbound and outbound tonnage, everything being equal as to freight rates and service. There was a written contract on that subject with the Carpenter-O'Brien people as to everything except as to rates, I think. I have not a copy of that contract now. It may be in the files of the Brooks-Scanlon Corporation. I might make another—elaborate on that statement just a little bit in this way: That another controlling factor about our failure to buy and operate that railroad was the fact that Mr. Walters was substantially in both of those companies and who owed large sums of money, the McNair & Wade Lumber Company and the Southern Timber & Naval Stores Company; and he said he didn't want to see that tonnage get away from the Atlantic Coast Line. And that fact had some bearing with [fol. 791] us. We owned them a great deal of money at that time and so he gave some consideration to that phase of it.

"Q. Were you given any assurance, at that time or afterwards, with respect to the permanency of this rate, the Cummer scale, as to its remunerative character?"

"A. Only this: Mr. Walters assured us, as did Mr. Brand and Mr. Menzies and Mr. Delano, that they would take care of that situation out there, that they were not making

freight rates, but that they would always find a way to take care of that railroad that we located there."

The Putnam Lumber Company started sawing pine lumber on the 1st of January, 1919. After we had leased the Cummer Lumber Company's plant at Milldale, if my memory serves me right, we started in 1923, after we purchased the McGinn Company plant in the other end of Jacksonville, we were sawing about seventy-five million feet a year. About forty to forty-five million of pine, and thirty to thirty-five million of cypress; it varied; some years when the market is not right we don't produce as much. We are operating under the so-called Cummer log rate scale at both the Ortega plant—the old McGinn Lumber Company plant —and the Milldale plant (Tes. pp. 589-590). The number of trainloads of logs per week that we take and that are delivered to us varies. We have the night run-off at both the plants now; we are not operating except at day time at each one of the plants. We have got a yard full of lumber and can't sell it and so we have restricted the output. Under normal conditions we usually take six train loads per week when we are operating to capacity. We are now taking five or six and still are, but we have to run forty-car trains; and these other fellows operate under a thirty-car [fol. 792] minimum.

They deliver us the empties there in train loads about five o'clock in the morning, take them down into our terminals and the engine and caboose are cut loose from them. We take hold of those cars and take them to the woods and load up the cars and bring them back; and they put the engine on one end and the caboose on the other, and they take them on to Jacksonville (Tes. 5.591). We do not get any logs in other than train loads. The movement occurs at night. We usually leave the camp at seven or eight o'clock at night and get into Jacksonville about five o'clock in the morning. A complete turn-around would be about 48 hours, although that is not on all of the equipment. We have something like 170 cars in our service, and naturally it takes—there are more or less "bad orders," and we are sometimes late in getting them unloaded, and the trains are sometimes late with them, and those extra cars are put in that service to take up the slack. The normal turn-around is 48 hours. The Cummer scale rate to Milldale when we

first started operating out here at Brooks-Scanlon was $12 per car, fifty thousand pounds to the car, excess in proportion and the rate now is $17. The increase has not been all at once, if I recall it right, there were three advances and one decrease. That advance was made during the war, part of it was taken off, so that the rate today is $17 as against $12 when we started operating in 1913. We have had operating contracts on behalf of the Putnam Lum- [fol. 793] ber Company with the Atlantic Coast Line Railroad. The first contract was made I think in 1918. That was during the Government administration, I think it was. This appears to be a copy of the contract.

(Whereupon Intervenors' Exhibit No. 33, witness Fleishel, was marked for identification. Tes. p. 592.)

(Exhibit No. 34 was marked for identification as an exhibit, with a letter on the first page.)

(Exhibit No. 35 was marked for identification.)

The Witness (continuing): We made a subsequent contract with the Coast Line in 1923, I think it was, covering the movement of cars from Cross City. The original contract was made covering the movement from Clara, Florida. The second contract was made to eventually succeed the first one, but they were both operating at one time for about a year. The latter one is operating now and was made in 1923. Exhibit No. 34 appears to be a copy of a 1923 contract. (Tes. pp. 593-594). I identify the explanatory letter on there, which is signed by Mr. A. H. Page.

I have prepared a statement showing the approximate amount of our timber holdings as of December 31st, showing likewise the approximate present book value of our investment, and likewise the approximate number of men on the payroll, showing likewise the pine and cypress logs shipped from Clara and from Cross City. This seems to be the exhibit marked No. 35.

"Examiner Brown: These three documents will be received as Intervenors' Exhibits Nos. 33 to 35, inclusive" (Tes. p. 595).

[fol. 794] The Witness: Practically always the ordinary load on a car shipped from the points of origin to our mill exceeds the minimum of 50,000 pounds by about 25 to 30

per cent. The amount paid by us is in proportion. It is the basis of 50,000 pounds per car, excess in proportion. I have been engaged in the lumber business in Florida about 14 years and am acquainted with various timber holdings throughout the northern and eastern part of the State of Florida. It is and has been a part of my business to keep up with matters of that character (Tes. p. 595). We have bought some virgin timber since the original stand was acquired by the Putnam Lumber Company in recent years. Whenever we could buy timber at a moderate price, well located, we have ordinarily bought it to keep our plants in operation if it was anywheres near tributary to our other holdings. I was present at the Valdosta hearings and I have been present throughout the examination of the witnesses at this hearing.

"(By Mr. Adair:)

"Q. Mr. Fleishel, based upon your own knowledge, can you say whether or not there are available for sale to, or purchase by, Georgia operators, any merchantable tracts of timber within 150 miles of the Georgia boundary line—the Georgia-Florida boundary line?"

"A. Well, if you mean by merchantable tract of timber anything more than for a little ground sawmill, I would say absolutely no."

"Q. What sized timber tracts would you include in merchantable then?" (Tes. p. 596.)

[fol. 795] "A. Anywhere from six or seven million feet up."

The basis for that statement is that I think I have been practically over every county in north Florida in the fourteen years I have been here; I did nothing else for the first few years I was here, looking at the timber with a bunch of timber cruisers, looking for first class timber. There is merchantable timber within 150 miles of the Georgia line, but it is not available for sale to or purchase by Georgia mill operators because it is already owned by these saw mill operators who have big investments in saw mill properties before. By big investments in saw mill properties I mean going saw mills involving large sums of money. It is wholly inpracticable to log and ship those small tracts—

ship the timber from those small tracts, to Georgia points, there to be sawed, except where the timber is lying practically alongside of the railroad. The reason is because you can't afford to build a railroad out there into that kind of country that will carry these main line cars. If you have ten to fifteen million feet of timber, you can't afford to build a railroad out there, you can't ship these logs if you build a railroad out there, unless you have enough timber to justify you in building a railroad (Tes. p. 598). As to whether or not there are located along the Atlantic Coast Line Railroad within 150 miles of the Georgia line any tracts of six or seven million feet of timber that are so located as that it would not require logging roads to log [fol. 796] them, that is not now owned by present operating companies, I don't think there is a one. When I spoke a few minutes ago of the large investments in saw mill properties I meant operating in Florida. As a practical matter, it is absolutely impossible for an operator of a saw mill at a Georgia point to acquire and ship logs from Florida to Georgia, or even on the so-called Cummer scale, if that scale were made applicable to interstate commerce. I am entirely sure of it. Because, in the first place, it is the most impracticable thing in the world. You are taking the lumber right away from the point where it is worth more money to begin with. Lumber is worth more money in Florida than in Georgia. Timber is worth more money in Florida than it is in Georgia, by reason of its location to tidewater, and by reason of the outlet of, and the consuming territory of Florida, where it is nearer to consuming centers, as well as outbound water freights. There would not be any timber available for purchase by those Georgia operators, in merchantable tracts, unless they purchased at a price large enough to justify some sawmill man in selling his timber. The effect on the logging cost would be reflected in the price of the timber, and the price at the mill. We are having a hard enough time to meet the competition of the Pacific Coast Shippers now without that added cost in our production (Tes. p. 599).

"Q. How under present latter day logging and saw mill conditions are small isolated tracts of timber logged and milled, if at all?"

[fol. 797] "A. Well, it is only done by tractors for a very short distance, and they move the saw mills to where the timber is."

There are such things as portable mills. Small isolated tracts are ordinarily cut with portable mills, always. There are other methods of logging and milling small isolated tracts so as to come out on the operation. During the last few years, with the construction of these hard roads all over south Georgia and Florida, a good many of the fellows that operate these small mills have been able to haul their logs farther than they used to; as long as they had the public to keep up the roads, they could haul the logs over four or five miles of hard roads cheaper than they could over a railroad or over one mile of cheap road; but the principal milling of timber is through little small mills, because the little small mill, unless he owns a big tract of timber, certainly cannot afford to build and operate a railroad (Tes. p. 600).

There is no competition of ours at all between mills located at Valdosta and Climax, Georgia, and the mills located on tidewater in Florida. We sold our timbers and heavy planks to the eastern seaboard territory, we exported more or less of it. We sold our side board, such as flooring, ceiling and siding, largely in Florida, and a little in south Georgia. When I say on the eastern seaboard I mean the territory Baltimore to Portland, Maine. That is the port cities of the east practically entirely. We can't compete with the mills in Mississippi and Louisiana when we get back from the seaboard—yes, with the seaboard cities. We [fol. 798] do absolutely no business in the Middle West and under normal conditions we don't even attempt it any more (Tes. p. 601). As to what difference there is in rates, between the water rate from Jacksonville and the other tidewater cities to the cities on the north Atlantic Coast that I have named, and the rates by rail, that is, to like places, from Valdosta, Climax and other south Georgia towns in their general vicinity, the all-rail rates are substantially the same. What are known as Georgia main line points are practically the same as Jacksonville; I think we have one cent advantage to a few points. As to the cost per thousand feet, transporting the lumber by

water from Jacksonville to ports on the north Atlantic Coast and the cost of transporting the lumber by rail from Valdosta, Climax and like points, on lumber, on yellow pine lumber, it costs us about nine dollars per thousand to deliver it up there; and if we paid the all-rail rate from Valdosta or Climax, it would cost us twenty-two dollars a thousand. Because of the outgoing rate they are excluded from those markets and we never hear of them any more than if they were not on the face of the earth (Tes. p. 602). As a matter of fact, from our experience in operating large saw mills in and near by Jacksonville for the last fourteen years, we have never encountered any competition from any lumber man either at Valdosta or at Climax or in that neighborhood, except in South Florida on the side boards, but not on timber, not on the kind of lumber we [fol. 799] ship to the eastern seaboard; no. We ship all the boards we make with the exception of what is exported to south Florida.

"Q. What competition do you encounter down there on side boards?"

"A. During the war we did not hear of them. A good many of the Georgia mills were shipping it down there, and they were shipping it to Texas and Louisiana. That was a very abnormal condition."

Under normal or ordinary conditions, they can and do attempt to compete in south Florida in this business on side boards, with their little, cheap, trashy roofers; but then, of course, that is a very low grade of lumber, or they don't have an outlet for it elsewhere. Roofers is practically all. Oh, you couldn't afford to pay main line freight on logs to make roofers out of them; no, sir, because you only get about $18 for the lumber to start with, after it is finished and dressed and dried and sawed (Tes. p. 604). Some fellow may cut a few logs because he has a saw mill that has cut out the timber, or something like that, and he may swap dollars to extend the life of his saw mill for two or three months on an investment that is already made; but as a practical proposition it is unthinkable. There is not any material competition anywhere, absolutely none, either in the East where these gentlemen testified—or rather points east of the Ohio River is the way I believe they put

it—they sell their principal output in competition between us or the other mills on tidewater and these plants located there in south Georgia.

The 190,000,000 feet located at some location which was [fol. 800] referred to is known as the Montague tract. It has also been referred to as the Epinger and Russell tract. I know it by both names. Yes, I have been over every acre of it. That particular tract of timber is 168 miles from Valdosta along the Atlantic Coast Line Railroad. It would have to move over three branches of the Coast Line to get there then—three different divisions. That particular tract is 52 miles from Jacksonville. In fact, it starts 46 miles. If we suppose that this Cummer rate then were made applicable to interstate commerce as well as intrastate, the difference in the log rate on that basis between the shipment of that lumber to Jacksonville and the shipment of that lumber to Valdosta would be that it would move into Jacksonville on a rate of eight dollars and a half a car of seventy-five thousand pounds; to Valdosta it would be nineteen dollars, but the big point is that the lumber produced out of that timber would be worth five or six dollars a thousand more on Jacksonville market than it would on Valdosta, because it would be on tidewater. The finished [fol. 801] product we could get would be worth five or six dollars more per thousand at Jacksonville than at Valdosta or any interior point (Tes. pp. 605-606). I know that that tract has been recently sold. It was bought by Goethe Brothers. They operated a saw mill right alongside of this tract of timber ten years at Manning, on the Coast Line. The next preceding ten years, yes sir; and they had another saw mill on the north end of the timber that has been operating right immediatealy adjoining this timber for the last ten or twelve years. My understanding is that they paid about one million eight hundred thousand for that land and timber. That is my understanding; I don't know that to be true. That is what they were asking for it (Tes. pp. 606-607). I have been over the property. The best timber has been cut out of it; it is what is known as cut-over timber; there are two or three big trees lying there along the branch that are too expensive to log. That property has been on the market constantly during recent years and it has been offered by every real estate man from Wash-

ington to Houston, Texas. Brooks-Scanlon looked at it and I looked at it and two or three others looked at it but none of us bought it. That was long before the Valdosta hearing. I think the timber was sold when the Valdosta hearing took place (Tes. p. 607). It was long before this suit started that I looked at it once three years ago, and I looked at it about a year ago, and I think Brooks-Scanlon looked at it about two years ago. All of that was long before this action was ever commenced or was ever heard of. The purchaser of [fol. 802] this property has no connection in any way, shape or form with any of the intervenors in this case. I know he has not. It has not been suggested by any intervenor that he buy the property. Operating as he was, on two sides of the property, he was the logical customer for the property, and he moved his mill down there 15 miles rather than pay a 15-mile freight on it (Tes. p. 608). If there be a desirable tract of 190 million feet of timber the size of mill that would have to be constructed to cut it would, in my opinion, be anywhere from 100 to 150 thousand feet a day. Six per cent on the purchase price of it would be four or five dollars per thousand on that capacity, per year. Such a mill would cost half a million dollars to construct. Then Mr. Jackson, who testified in Valdosta, would have had to put up something like a million eight hundred thousand dollars for the timber, and apart from that, at least half a million for a mill to cut it. That is a modest statement about the plant investment (Tes. p. 609). I understood Mr. Jackson's testimony in Valdosta to be that he had a little bit of a mill up there now. As to whether it would be within the bounds of reason for him to have cut any such tract as 190 million feet with that little mill that he had in Valdosta, he would have to have four or five like that, or six. And if you assume only an annual cut of nineteen million it would take fifteen years to do that and he would have a fifteen to twenty dollar a thousand overhead cost on that mill. Therefore it is preposterous for a man assuming to do any such thing. It is utter-[fol. 803] ly ridiculous, in my opinion I have been in the lumber business about thirty-one or two years. As a matter of fact, it is my life work. I have never done anything else. As to whether or not I believe that if any of these gentlemen on tidewater had this thing to do over again now they

would locate their mills on tidewater, or they would take their punishment and go to the woods, I think I can answer that best by telling you that I am moving mine to the woods now notwithstanding the loss that will accrue by virtue of the removal of my cypress mill. It will cost us a million and a half dollars to move to the woods. Over the period of the last several years several new mills have been built in Florida. One built at Lake Wales, Florida; one at Seers; one at Sherman, Florida; another at Holopaw, Florida—all large mills (Tes. p. 611). All of those mills have been built at the timber. There is no point in building at tidewater any more. The only justification for maintaining these mills at tidewater is the tremendous investment they have got. The loss in our operations is overcome by some advantage in the water rate, and that is the only excuse in the world, is your outbound water freight. Your outbound shipping weight of lumber is only 40 per cent of your inbound weight. The tidewater mill is moving in the general direction that the finished product will take when it is manufactured. These mills that have been built in Florida in the last five [fol. 804] years have every one been built interior, and built on the Atlantic Coast Line Railroad when they had the advantage of this Cummer scale, nad still would not use it. They found it more economical to go to the woods. Sure; there is no question about that (Tes. p. 612). As to whether or not, knowing as I do the timber situation in northern Florida, it is possible for any material amount of logs to move in interstate commerce from Florida points to Georgia points on the Atlantic Coast Line Railroad, even if the Cummer scale were made effective in interstate commerce, I don't think that there would be 200 cars a year moved if you make it half of the Cummer scale. There would be no material amount of it moved if the Cummer scale itself were put in. I know there would not.

It is perfectly satisfactory to make a rate of a dollar on a car on the Atlantic Coast Line to Georgia from Florida. It would not make any difference in the conduct of our business, not anything. They can make a rate of a dollar a [fol. 805] car so far as I am concerned. If I might make a general statement about a proposition, I would be glad to do it.

Your Honor, as I understand it, the question at issue here is the question of an interstate rate on logs from Florida into Georgia. I have been in this territory for fourteen years, and I think I know as well as any man the possible sources of any timber in north Florida within, say, a radius of one hundred and fifty miles south of the Georgia line. It is a perfectly silly thing to talk about logs moving from Florida into Georgia, on account of the rate, even the present Cummer rate that is talked so much about. The timber is not there. It is owned by large lumber companies who have already got their companies highly organized to take advantage of the logging. These little biscuit-cutters up in Georgia that use big, thick circular saws and cut lots of lumber, get less lumber out of a round log than these big band mills do, and they get several dollars a thousand less for their timber; and it is unthinkable to me that all of the time of the public should be taken up with the discussion of a question of this kind. I don't think there is any basis for it at all. There is some underlying motive other than appears on the surface. In the southeastern area of the United States it is a more or less general condition that these small mills have found their sources of timber about exhausted. They are moving their mills or going out of business. I will tell you something about the [fol. 806] commodity which has been referred to at this hearing called "Roofers." It is a piece of lumber, usually one by six and sometimes one by eight inches wide, occasionally one by ten inches wide, that is usually air dried and very knotty, and is used for the outside sheeting of a house —or rather, the inside sheeting on which the outside boards are nailed. It is the cheapest lumber that a saw mill produces, outside of culls, and it is used for sheeting almost entirely. And the larger mills, as a rule, don't make that kind of lumber, to that extent. I would say that ninety per cent of the lumber being produced in south Georgia today is of that type (Tes. p. 615). As to why the statistics contained in my Exhibit No. 35 are as of December 31st, 1925, that particular day, to be perfectly frank with you, my auditor got it up by request of these attorneys in this case, and I know nothing about it other than these figures were taken off the books. The fact is, when these figures

were gotten up, 1926 was not ended and we could not have given it to you for the full year. We don't make any half-yearly computations but we can get it for you by the month. No substantial changes since December, 1925, only this, we produced less since last year because we have not been running at night for the last few months. Otherwise outside of a few million feet produced the assets are practi-[fol. 807] cally the same. I wouldn't say that the capital assets had changed at all. The figure of 1,099,000,968 is feet; yes, sir. On page 2 of my exhibit, with reference to cypress logs shipped out by the Putnam Lumber Company to Ortega, Florida, I have omitted the number of cars and the average per car for the number of years, but I could not tell you what the significance of that omission is. Personally I had nothing to do with compiling this statement. We can supply it. There is no significance to it. We have been doing more or less logging on the river there, and we are not able to make a statement. I guess that is the answer to it. We get more or less logs out of the river that are not hauled by rail, and we would not know how much of this weight was involved per car. And I imagine that was the reason we did it. Both the pine logs and the cypress logs were carried by the Atlantic Coast Line Railroad, all those that came by rail. Not on our private tracks. We get some from the Seaboard. It shows the amount, in dollars, and I imagine those "feet" are supposed to represent total feet, although I am not positive (Tes. p. 617).

In regard to moving our tidewater plant to the woods, we don't own any properties on tidewater. We have got them under a very favorable lease, a good deal less than one per cent of the value of the dirt alone. We are moving them because we can't pay the Cummer scale log rate. We are moving them 125 miles to Jacksonville. We are moving [fol. 808] them out near Cross City, Florida. That is right in the timber.

Cross-examination.

(By Mr. Perry:)

The approximate maximum distance that we haul logs now is 120 miles (Tes. p. 618).

"Q. Where is this $17 rate, what is the distance, and what point does it move from that you spoke of?"

"A. We don't pay that; we pay $16."

The rate was increased from twelve to seventeen dollars for delivering them over the old Brooks-Scanlon trestle, which was a longer haul. We pay $16 between Cross City, Florida, and Jacksonville. It is within the 120 mile bracket. It is just a mile or two less. There are other lumber mills on the Atlantic Coast Line Railroad between Jacksonville and Newberry, and between Dupont and Perry, Florida. There is a saw mill that is just below Lake Butler on this tract of timber that we were talking about here, of Goethe Brothers. I think that is the only saw mill there is between Jacksonville and Newberry; and there was a little "ground rattler" mill between Dupont and Newberry, but I think that is done. There are none between Dupont and Perry unless it is some little two by four outfit or that is there temporarily; there are one or two little ground rattlers at O'Brien, Florida (Tes. p. 619). There used to be a cypress [fol. 809] mill at Jasper, Florida. I don't think there is any mill there now. I do not know; I have not paid any attention to it lately. I know that the company that was operating there quit, but I don't know whether they ever started up again or not. At Live Oak there is a little portable saw mill that was making more out of the slabs for the city than by lumber. Of a capacity of about seven or eight thousand per day. This location I referred to as between Jacksonville and Perry on the Atlantic Coast Line is the outfit that bought this 190 million feet. That has been operating at Manning heretofore, a little closer in, or a little further down rather. The capacity of the mill that bought this 190 million feet, I would say they have one mill on the Seaboard that is cutting twenty-five or thirty thousand feet a day of lumber, and the other I imagine is cutting thirty or forty. They said they were going to build two mills. They built one, which is unfinished, and then they have a small mill running there in addition. It is about the same size and capacity as Jackson Brothers mill at Valdosta. I am only acquainted with the Jackson Brothers plant by hearsay. I think it is a circular mill; I am not sure. I don't recall that I did hear Mr. Jackson testify

yesterday that it was a band mill. If he testified to this I would accept it as correct. I am well acquainted with the facilities in Georgia and the operations up there; I have had opportunity to gather that impression that is satisfac- [fol. 810] tory to my mind, and I was largely familiar with the capacity and operations of these enterprises generally in south Georgia (Tes. p. 621). I have never been out to the Jackson Brothers Mill. I know something about the Waycross enterprise. My recollection is it is a circular. Its capacity I judge would be about 20 or 25 thousand. That mill at Albany is a band mill. There is no reason whatever why they can't cut lumber as cheap as we can with a band mill. As to whether I was not mistaken a while ago when I undertook to compare the comparative cost in Georgia with Florida, if these "ground rattlers" do not have modern machinery, I was not mistaken. I did not speak of that as a ground rattler mill. I spoke of the handicap because they did not have band mills, but you are talking about a mill now that is a first-class mill at Albany that is cutting cypress and hardwood lumber; and it is the only hardwood lumber mill in south Georgia; and I think I know most of them. There was one at Waycross, but they walked out and quit; they just walked clean away (Tes. p. 622). I would say that Jackson Brothers mill bordered very closely on being a ground rattler. I haven't had any actual experience in operating ground rattlers or small mills for several years. I am operating one right now to saw some timbers for this new plant of ours. I have operated some mills all the way from the rattlingest bound rattler there is up to the biggest ones. At one time I had eight or ten of these small or portable mills, with an output of anywhere from five to ten thousand feet a day. That was years ago when conditions were somewhat different [fol. 811] from what they are now. I have not operated any except this little mill I have now (Tes. p. 623). I am not familiar with the output of the plant of the Bray Lumber Company at Valdosta. I have never been to the plant of that Company. I have been by there when we were there at the hearing. I would say the capacity is 25 or 30 thousand feet; maybe 35; I have operated a plant of that size when I was in the small mill operation. But I do not class that as a ground rattler, or small to fair. I spoke of the

Georgia mills as small mills or ground rattlers. Ninety per cent of them are ground rattlers (Tes. p. 624). There are just something like ten per cent up in the grown men's class; I would think that is true (Tes. p. 624). If there were a band mill at Valdosta that cuts fifty thousand feet of lumber a day, I would consider a mill of that proportion of some importance in matters of rate adjustment with regard to their just right to compete in competitive territory, yes, sir; I think the little fellow is entitled to as much right as the big one.

"Q. Sure. Then there is in Georgia lumber manufacturers of sufficient importance to justify their consideration as a mill that is entitled to compete wherever their business carries them, in the drawing of logs, or, of course, in the sale of their products? That is true as to Georgia then?

"A. If he has got a saw mill and he wants to draw logs he is entitled to some consideration."

"Q. Yes, sir. Now, you stated before noon that so far as the Georgia manufacturer is concerned, your business is of such proportion as to make it impossible for you to know why they exist insofar as competition is concerned?

"A. I didn't say that.

"Q. I thought you said you didn't know they were on the face of the earth, before dinner?

[fol. 812] "A. I said so far as competition is concerned.

"Q. That is what I said."

"A. Yes, sir; but we don't ship lumber to the same territory via the same routes."

"Q. I don't mean you disparage the amount of business they do, but you don't know them in the business so far as competitive conditions are concerned?"

"A. Yes, I know Reynolds Brothers very well."

They compete with us, on cypress in a small way, but not pine. Because cypress is a very light wood and it is practically all dressed, and yellow pine timbers are very heavy, and are usually shipped rough, and we have such an advantage over them in the outbound rate from tidewater that if they were shipping outbound lumber they couldn't compete with us. If they had the opportunity to draw cypress logs from Florida on a rate similar to that of ours, distance, of course, considered, I don't think they would

be in a better position to compete with us than they are now, because I don't think there is any cypress commercial timber they could buy. I know practically there is not. There may be a few trees here or there, but you can't market it like you can pine. You have got to have heavy equipment, big skidders—and you have to have a heavy railroad to carry it, you can't skid cypress logs like you do small logs. As to whether the supplying of cypress to small mills is different from what it was years ago, that is so only when you use trucks. It is feasible to use trucks when drawing logs for transportation, rather than railroad, up to a distance of three or four or five miles, at times, but I [fol. 813] would think not further than that. If there is any cypress timber on the Monticello Division of the Atlantic Coast Line in Florida it is in very small quantities and very spotted. Broadly speaking, there is no cypress timber on that area. I speak from knowledge. We looked at timber at a little mill on the South Georgia Railroad. Speaking of the Coast Line only, I made that trip across there several times, and I never saw or heard of any timber that I would call cypress timber. There may be four or five trees standing around here and there; but in the lumber business we don't speak of that as timber. I do not know whether Reynolds is drawing any of that timber from Florida now.

"Q. Now, as to competition: You say, relatively speaking, you do not feel the competition of the smaller mill. Isn't it true as to the output of your plant that the little mill does feel the competition of the larger mill?"

"A. No sir. I know that because those mills in Georgia are not making the same kind of lumber that we are at all."

"Q. You mean the cypress mills?"

"A. The pine mills."

"Q. The cypress mill at Albany?"

"A. They cut hardwood and cypress both; but we don't cut any hardwood."

If he were placed on a competitive basis he could increase his business, if he could get any timber, if he were small enough to sell it, and we aren't smart enough to sell ours. I would not say that the freight rate enters into the drawing of logs, naturally, so far as drawing logs into Florida from

Georgia is concerned. That is on the assumption that I know the location of all the cypress timber in Florida on [fol. 814] the Atlantic Coast Line Railroad and I think I do.

We are dismantling certain portions of our property, to the amount of about one million five hundred thousand dollars, and moving it from tidewater to the woods, because the economy of the thing appeals to us and causes us to do that, and certainly for no other reason whatever. One of these plants is only three years old and it has got fifteen years yet to run.

The so-called Cummer log rates in Florida are not of such a nature as to make them especially desirable where you have to draw your logs one hundred and twenty or thirty or fo-ty miles. They are too high, and for that reason we are going to the woods, and for the reason we have our weight net going to tidewater when we get out there. On forty per cent we get nothing back for, on this haul. Your advances on freight rates that have been taking place on sixty per cent of the weight of the timber or the log that have no place in lumber. The extension of the Cummer scale into Georgia would not interfere with our operations. It would not interfere in the slightest. As to whether, if at Valdosta, Georgia, there is a plant of fifty thousand daily capacity, and he ships his lumber to the East and we ship ours to the East, that plant at Valdosta is not under a handicap in meeting this competition with us where we both compete at the same place, by reason of having to pay a higher freight rate than we pay, because he does not make the same kind of lumber we do. He has got a flooring outfit out there where he cuts his lumber practically into [fol. 815] one-inch lumber. We ship timbers and plants to the East; timbers of two or three inches and any width, say six inches and up. Now Mr. Jackson tries to make flooring. We don't ship a foot of our flooring up into the territory that he claims to ship in. I don't think that the output of the Bray Lumber Company finds a market in the same territory. They sell most of theirs to the railroads that are right there, I understand; they don't ship the same people we do; they could not do it because we have ten or twelve dollars a thousand advantage over them."

"Q. Well, now, the real picture, Mr. Fleishel, is this; that there is a business in Georgia, the same line of business to

a degree that you are in; they have the same type of machinery that you have; but smaller, that is, band mills, that manufacture to some degree the same kind of timber that you manufacture; and their output finds its market in the same territory that yours does?"

"A. You are ass-ming that?"

"Q. Isn't that true?"

"A. I don't think it is."

"Q. Well, I understand that you shipped yours to the east?"

"A. True."

"Q. Mr. Jackson testifies that he shipped his to the east?"

"A. I don't think he testified that he shipped that kind of lumber to the east."

"Q. And Mr. Giddens testified that he shipped his to the east?"

"A. That kind of lumber?"

"Q. Yes, sir; that is my recollection of his testimony, as to where he found a market."

[fol. 816] "A. Possibly he did."

"Q. So if that is true, there is no reason why they shouldn't have the same freight rate as accorded their competitors in Florida, including your business among the number, is there?"

"Mr. Adair: Mr. Examiner, we want to be liberal and courteous; but it seems to me when they ask this lumber man here to testify upon the rights and reasons surrounding the making of a freight rate, that is going too far afield and getting into a realm where I, a lawyer, would hestitate to express an opinion. I object to the question on that account."

[fol. 817] "Mr Perry: I don't think, if your Honor please, that it is an opinion at all. He is testifying as to the facts. He qualified by saying that he knew about the Georgia business similar to that."

"Mr. Cotterill: I assume your Honor will not require the witnesses to answer without qualifications what the rights of anybody are."

"Exam. Brown: The last question seemed to call for a conclusion, Mr. Perry."

"Mr. Perry: The question was, your Honor, as to whether or not he knew of any reason why they should not have the same freight rates into Georgia, if he has reasons for it. It is not a question of conclusion. If he has got reasons why they should not have that rate, why, he should say so."

"Mr. Cotterill: If your Honor please, the witness has not indicated on direct-examination that he objects in the least measure to the Florida rate being established in Georgia the same as between Florida and Georgia."

"Mr. Perry: I appreciate it; and he stated if it was a dollar a car."

"Mr. Cotterill: And his having said he does not object to it, I cannot understand the object as to why shouldn't it be."

"Mr. Perry: His reasons why it should not be extended into Georgia is what I want to know."

"Exam. Brown: If he wants to state any reasons on that subject, I will permit it for what it is worth."

I do not know of any reason why the Florida log rate should not be established from Florida to Georgia (Tes. p. 634). As to the increases in log rates from twelve to seventeen dollars a car, I did not try to create any impression at all. I was asked what rates we paid in the be- [fol. 818] ginning, and I said twelve dollars a car; and I was asked what rate we were paying today, and I said seventeen dollars a car, and qualified that by saying that part of the advance which took place during the war period was afterwards reduced; but the horizontal advances that have taken place in these rates since operations was from twelve dollars a car to seventeen dollars a car. I think they were general advances in all log rates, that is, on the Coast Line; I don't recall whether they took place on the other lines or not, and if the log rates on the Coast Line were below the general or normal basis of rates, and if those rates were made on a percentage basis, the amount of our increase in rates was relatively less than the amount of the increase in the normal or general level of the rates, that is a matter of mathematical calculation; but I should think so.

Redirect examination.

(By Mr Adair:)

I spoke of the advantage of ten or twelve dollars on timbers and planks over the interior Georgia manufacturer. I meant, I was referring to the advantage in the water rate. I think it is clear in the record, because I stated that the present cost of hauling lumber by water to the consuming centers at the eastern seaboard cities was about nine dollars per thousand, and the all-rail rate from Georgia main line points would make a cost of anywhere from twenty-two to twenty-five dollars a thousand for the transportation of the same unit of lumber. Our market in the east is confined to the coast cities. The principal competi- [fol. 819] tion that comes in and has come in during the last two or three years has been almost wholly out of the Gulf by steamer and sail to those same points, and from the Pacific Coast. The worst competition we have encountered is the Pacific Coast. It has been going on and steadily increasing for the past five years. Five years ago it was about three million feet that passed through the Panama Canal. In 1926 it was two billion feet, and there has been a substantial increase every year. That is water borne lumber; they have been putting it through there for the eastern seaboard ports for twelve or fourteen dollars per thousand freight measure—that means rough lumber. And the freight from Georgia main line points or from Jacksonville by rail would be anywhere from twenty to twenty-five dollars a thousand. Of course, their lumber is lighter than ours; that makes some of the difference (Tes. p. 637). I am sorry to say the fellows on the Pacific Coast make the market in the eastern cities now, and we are required to meet that. I can't conceive of a Georgia interior man marketing his timber in the East. He can sell every foot of his timber in other territory, and these railroads pay as much out in the woods as they do at their own stations if their own rails reach there.

In speaking of the contract, I meant I had no written contract fixing rates. As to whether I had no rights, moral or legal, under the representations that were made to me by the Atlantic Coast Line officials, I don't know. We have [fol. 820] not been able to enforce them in any way. We

have always felt that the moral obligation was there. When that body of timber was put together, those four or five big groups, and we were induced not to build our own railroad, which we would have been thoroughly justified in doing, we felt like those logs ought to have been continued to be hauled at the lowest cost to haul them. They have told us that in the beginning, but I don't know whether they have told us that since then or not.

We have felt this burden of the Pacific Coast competition in the southeastern coast cities only in Florida, at Tampa and Miami. It wasn't particularly burdensome at one time because there was more demand than there was lumber from all sources for a while, but neither ourselves nor those fellows are in business down there now.

As to whether these Georgia mill men should not have the same rate the Florida people have, well, I don't think it would do either the Georgia people any good or the Florida mill people any harm. I can't conceive of how it could help the Georgia mill men or hurt the Florida men. That is why I made the statement I was not interested in what rate the Atlantic Coast Line made on logs from Florida into Georgia (Tes. p. 639).

Recross-examination.

(By Mr. Perry:)

As to being unconcerned about the rate interstate Florida into Georgia, I do not know all about their business or [fol. 821] their markets; I don't claim to know it all, no. The statement that sixty per cent of the roofers manufactured were manufactured by the manufacturers of Philadelphia and New York in the east—if you are speaking now of the present conditions, is not true, only up to the last month or two. It is possibly more than sixty per cent. We don't ship any roofers up there. I don't think there is a roofer manufacturer in Florida or anywhere else shipping roofers to Philadelphia. If he does he ought to be put in an insane asylum. They ship them to Florida and Georgia. If the Florida manufacturers ship roofers into Georgia, they may come into competition with the Georgia manufacturers, probably so. We don't ship any there ourselves. I imagine some of them may ship roofers into

Georgia, although I don't know how they do. It is a very unnatural territory, to ship from Georgia into Florida, because lumber is worth more in Florida than in Georgia and the average south Florida mill cannot ship into Georgia. Well, ordinarily, Florida is a better market than the Georgia market. There is reason for the Georgia manufacturer wanting to ship into Florida sometimes, yes.

The water rate per hundred on lumber from Jacksonville to New York is nine dollars per thousand feet by the Clyde Line. It is stated per thousand feet, which weighs about five thousand pounds to a thousand.

I think our all-rail rate from Jacksonville is about 42 cents; I dont know; we don't ship any of it that way; it is about the same thing by water from Valdosta; it may be a cent more; we don't ship any lumber to New York be- [fol. 822] cause we go into the New England ports where the rail rate is higher and the water rate is no higher; for instance, Fall River and Providence, and Portland, Maine. We don't ship a foot to New York proper. We ship to Boston. The rate to Boston I think is 45 cents; I am not sure. I think the water rate is 9½ cents. We don't use that rate though. We ship in our own vessels and it don't cost us that. I think others use that rate out of Jacksonville, but our rate is not necessarily based on that, no. We figure on a transportation cost of our own vessels because it costs us more money to get it up to the steamer; we load our own vessels at our own docks. The shipper at Valdosta can ship on steamer. I don't know what the rate is on Valdosta via Jacksonville; I suppose it is about ten cents, or twelve; I suppose it is about 12 cents (Tes. p. 643).

The terminal charges at Jacksonville are about a dollar and a half per thousand feet. My impression is that the bulk of the Georgia lumber moves to eastern cities and interior eastern cities. The timbers, I said, do not go there, because you take Mr. Jackson in his testimony, he said he sold practically all of his lumber to the Norfolk & Western Railroad. Now, the reason he can do that is, the Norfolk & Western figure they get a certain division from the southern carriers; therefore, he gets the benefit of that. Now if he tried to ship lumber into Boston or New York or Portland, Maine, against our nine-dollar man, he would be lost, he would have twelve to fifteen dollars arbitrary to

[fol. 823] overcome. But he can sell to the Norfolk & Western Railroad, and the very reason he can sell to them is the very reason we cannot, because we pay rates to tidewater and gain an advantage on the through rate on lumber which is lower—just like the Atlantic Coast Line will pay as much money for lumber in Jacksonville as they will for lumber in Wilmington, North Carolina. That means a lot to the mill man. Outside of that railroad lumber, there is a decided movement to the eastern cities; that is, that moves in normal times up into that country. I would say ninety per cent of the pine lumber produced in Georgia is this roofer lumber. That portion of our lumber that is put into heavy plank and timbers altogether goes up to the east by water—that which we don't ship in export. We do quite a lot of export business. Our competition is in New England with the Pacific and Gulf mills. We don't ship a foot of lumber into that territory either by rail or water. That Pacific Coast lumber moves via the Panama Canal.

I am president of the Putnam Lumber Company (Tes. p. 645). That company commenced operations on the 1st of January, 1919. As to whether I felt I was under some moral contract obligation with the Atlantic Coast Line Railroad, I was coupling that, with the proposition that all of these properties were owned by the same men in the beginning. I was not confining that to the Putnam Lumber [fol. 824] Company's position at all, because in the beginning the president of the Putnam Lumber Company was president of all these other companies and it was treated as one proposition as a whole; and it was the intention, as I stated in the beginning of my testimony, that the purpose in the beginning was to have all of them in one corporation. And if we had bought and operated that railroad, why, that probably would have been done; but, for the reasons I explained to you, there were certain financial reasons on some of these properties that prevented putting them into one concrete whole. The only proposition that was entered into was with the Carpenter-O'Brien Company at that time. Before that time it was the Putnam Lumber Company. The only contract that dealt with rates was the Carpenter-O'Brien contract.

"Q. Was there or not a safety clause in that contract?"

"A. Yes, sir, subject to the rate making bodies approving what the rates were. Of course, we recognized the fact that the railroad could not make a contract that would indefinitely protect a fixed rate at that time."

"Q. And to the general effect, was it, that any order entered by any competent authority requiring the ceasing of that rate would not be considered a breach of the contract?"

"A. I don't think it was intended that that would be a breach of it, if they were not instrumental in helping break it down."

"Q. Anything in the contract or elsewhere about that?"

"A. I don't think there is, no" (Tes. p. 647).

Recross-examination.

(By Mr. Price:)

We manufacturers at Jacksonville do not have to pay this dollar and a half terminal charge because we have our own docks.

[fol. 825] You asked me the rate when it was shipped in from Valdosta, the Merchants & Miners, by steamer, out of here—they are the only ones that handle it that way. This dollar and a half a thousand terminal charge would not be incurred in the case of the two mills located here because they both have their own docks. There is a little mill out here running once in a while, cutting a little hardwood and a little cypress and a little pine, but I don't think they ship any cypress, they sell practically all of it locally (Tes. p. 648).

(Witness excused.)

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W. C. Reeves was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cassidy:)

My name is W. C. Reeves. I live at Thomasville, Georgia, and am a lumber inspector of the Southeastern Forest Products Association, formerly the Georgia-Florida Saw

Mill Association. I have been engaged in the lumber business practically 27 years and as inspector for the Association seven years. Prior to that time I was planing mill superintendent for various concerns. It is my duty in my present position to visit the mills who are members of this association and look through their stocks and report to the management if their manufacturing grades are not up to the standard. My duties require me to make frequent visits to mills located in the northern part of Florida and the southeastern part of Georgia, approximately once a month [fol. 826] (Tes. p. 649). I have an exhibit showing a list of saw and planing mills on the Atlantic Coast Line Railroad in the State of Georgia, as published in the issue of April, 1926, of the Atlantic Coast Line circular D-4593.

(Exhibit No. 36 of Intervenors, witness Reeves, was marked for identification.)

I prepared this list, this Exhibit No. 36. I have also prepared an exhibit from my personal inspection showing the actual number of mills located on the Atlantic Coast Line at the present time, and mills that are actually in operation at this time, which is shown in this next exhibit No. 37.

(Exhibit No 37, was marked for identification. Tes. pp. 650-651.)

In Exhibit 37, column 1, I show the average monthly production in board feet of these mills; and in column two I show the source of log supply; in column three, how these logs are procured, or rather the average mile haul by team or truck; in column four I show the amount of logs hauled and the average mile haul by a common carrier. As to how I arrived at the production shown in column number one, I visited the manufacturers and got this information either from the manager or his office or some financial agent of the concern (Tes. p. 651). The figures shown on this exhibit are approximately correct. There are no figures shown on exhibit No. 37 for Doctortown. I visited this plant but [fol. 827] could not secure the accurate figures. Mr. McKnight, the general manager, said he would not like to give out any information that was not exactly correct, and that they did not have the actual figures and it would take possibly a week to tabulate them. He did state, however, that the

principal production of the mill was the log forest production and was procured by water, via Altamaha River. That explains why I show 65 mills on the list and only 64 on the summary on page 5. Turning to page 5 of Exhibit No. 37 under the heading "Summary," I show under a column headed "Mills Logging Over Common Carrier" a production of 5,395,000 feet per month. On page 3 of this same exhibit under Quitman, Georgia, the production of the Barfield Lumber Company is shown as 800,000 feet which moved by common carrier and which is shown to move to mills over the South Georgia Railroad. This is included in the 5,395,000 feet. Barfield only moves one mile. On this particular page of my exhibit I show a total movement of 16,065,000 feet. The remainder of these logs are moved other than by common carrier by truck and by team and by water. Trucks, I should think, handle the greater amount of these logs. In another column of this summary I show an item of 660,000 feet in which there is no logging operation. This is the production of planing mills where they don't operate any saw mill and they buy their board supply from the small saw mill who doesn't operate a planing mill. In the sum- [fol. 828] mary I show an item of 60,000 feet as estimated. This is a mill that is now under construction, the Garrant Lumber Company at Argyle, Georgia. They are not yet operating and told me it would possibly be ninety days before they did operate, but they would maintain their own logging road, and this is an estimated production only. Taking this production of 800,000 feet which is shown to move only one mile over the South Georgia Railroad, and deducting that from the 5,395,000 feet, leaves 4,595,000 feet. This is the movement via common carrier to the Georgia mills of logs. All of the log movement via common carrier is not over the Atlantic Coast Line Railroad. A check of my exhibit will show that these log movements are over seven common carriers, exclusive of the 800,000 feet which moves the one mile over the South Georgia Railroad. On page 3 of my exhibit I show at Savannah, Georgia, an operation that moves logs a distance of 150 miles. I was informed by Mr. Wiggins, their office manager, that they did not operate a saw mill, and this 100,000 feet was high-grade hardwood logs for export only. The logs themselves are shipped as logs and not manufactured into lumber (pp. 652-654). I have prepared a map showing the mill points shown on Exhibit No. 37.

(The map was marked for identification as Intervenors' Exhibit No. 38, witness Reeves.)

The purpose of the map is to show the geographical location of the Atlantic Coast Line Railroad in Georgia, and [fol. 829] it is also to show the location of the mills along the Atlantic Coast Line Railroad, and included in that are some points such as Dupont, at which no mills are located, but are junction points. The map does not pretend to be drawn to scale. It is merely explanatory of Exhibit No. 37. The Enterprise Manufacturing Company at Waycross, Georgia, operates a planing mill only. No logging mill and [fol. 830] no saw mill at their plant. There is no saw mill at Waycross that I know of. There is another planing mill, but they don't operate log trains. They formerly depended upon getting their log supply from the Hebard Cypress Company and the Braganza Lumber Company. It is my information from Mr. Simmons that the Elberta Crate Company at Bainbridge do not operate a lumber plant. It is a crate mill. May be they haul some logs that are cut into blocks, but he told me that the principal source of their supply was the Flint River; in fact, they operate some barges of their own. It took me several days to make the check to see how many mills on the Atlantic Coast Line are in operation. I began on January 3rd and I was all of that week and Monday of the following week, I believe, in completing it. I made this trip in a Ford car. That was in January of this year. I made the inspection at the request of the intervenors in this case to get accurate information. My exhibit No. 37, the last column headed "By common carrier, average haul—miles"; by that I mean the railroad common carrier. That does not include water common carrier (Tes. p. 657). In the figures shown in that column there is no water haul. I secured this information in person through contact with the managers and operatives of these mills and their financial agents. I might explain what I mean by financial agent. In the case where there is a planing mill being operated that doesn't operate a saw mill, they sometimes finance a man with a saw mill and take the [fol. 831] output of his mill; and in that case I could get more accurate information from the planing man than I

could from the saw mill man as to what his average cut was.

(Intervenors' Exhibits Nos. 36 to 38, inclusive, were thereupon received in evidence.)

Cross-examination.

(By Mr. Perry:)

I have been in this business as an inspector for seven years (Tes. p. 658). I have been in the lumber business possibly 20 years prior to my connection with the association. I was at various places, with the Jackson Lumber Company at Lockhart, Alabama, one; the Smitherman Lumber Company at Chapman, Alabama. I was not in the saw mill business in Georgia but I was with W. D. Harrison Lumber Company once at Defuniak Springs. That is the extent of my lumber experience. I was never in the lumber businesss for myself. The purpose of Exhibit No. 37 is to show as nearly as possible all of the saw mills operating along the Atlantic Coast Line Railroad in the State of Georgia, and I got this information from representatives of the different mills on this trip which I made as to their output. That is what I was controlled by. That is approximately what they told me it was. I go to the mills of all of the members of the association and that largely covers these names on Exhibit 37. There is quite a few on this exhibit that are not members of the association. What I did was to give them all regardless of whether they were members of the association or not. I go to the members [fol. 832] places of business approximately once a month. That does not necessarily give me acquaintanceship with the timbered lands, of the territory covered by our members. I am interested only in their manufactured product, to see that they do it right. As to whether these Georgia mills are getting pretty close up to running without material or running out of material in many instances, I couldn't answer that question, because I don't know. They evidently have various troubles, but I don't know whether it is the lack of timber or lack of facilities in getting the logs through the mill. I have seen mills closed down because the timber was used up. Among those mills that were

closed, I might mention the Dunlevie Lumber Company at Allenburst, Georgia, and Boyd Lumber Company at Boydville, Georgia. These are both on the Coast Line (Tes. p. 661). Boydville is not on this list, because we knew they were not operating there and didn't show it on the map. They are, I believe, on this exhibit No. 36.

"Examiner Brown. No."

The Witness: Another one, the Kelly-Clark Lumber Company at Cairo. Gradyville Lumber Company, which is not directly on the Coast Line (Tes. p. 662). The reason I mentioned that was because the Kelly-Clerk Lumber Company was on Exhibit 36 here. They were served by the Coast Line by means of a short line railway running out to [fol. 833] their plant. It has since been junked. It ran out from Cairo, Georgia. I have forgotten what they called it. It is my recollection that the capacity of the Kelly-Clark Co. was about fifty thousand feet a day. I suppose they went out of business because they couldn't get any more logs. That is, they did not want to pay the prices of them. The Boyd Lumber Company at Boydville has closed down. I understand they are operating a small plant in Alabama; I don't know whether it is on the Atlantic Coast Line or some other railroad. Mr. Boyd told me he was moving because he had cut off his timber—his timber holdings around Boydville. Boydville is in Grady County, I believe, I am not sure of that; it is two miles of—west of Wigham. It is on the Coast Line; yes, sir (Tes. p. 664).

"(By Mr. Perry:)

"Q. If he had had a satisfactory freight rate from Florida to his mill in Georgia, couldn't he have remained in business?"

(Objection. Argument on objection. Objection sustained. Tes. pp. 665-667 incl.)

(Witness excused.)

"Mr. A. S. Wells: Mr. Examiner, I want to make a statement on the record."

"Exam. Brown: You may proceed, Mr. Wells."

"A. S. Wells, Chairman of the Florida Railroad Commission: When this case was first brought by the Georgia

Public Service Commission, the Florida Commission, of [fol. 834] course, was very much chagrined at the fact that a sister State would bring a case against a Florida rate or a sister-State rate, and it was not the purpose of the Commission to take any part in the proceedings or offer any testimony, although we put in an appearance at Valdosta. But when the Coast Line put into evidence a letter that was written in 1914 by our rate expert, and also one from the chairman of the Commission, the Commission then thought it was up to them to make an investigation, which they have done, and they proposed to put on this witness in this particular case

When this rate was granted, I think in 1913 or 1914, it had been in operation for years without the knowledge of the Commission. When they found out that this rate was being applied in Florida, they naturally called on the Coast Line to withdraw the rate. I am not exactly familiar with the correspondence—I thought I had it with me, but I find I have a letter file, and not the old file; but it seems that they wanted to put it in, in trains lots. The Commission insisted that they either put it in a unit of one car and make it over the entire system, or withdraw the rate. So they saw fit to appply the one-car unit over their entire system for this particular rate, which is known as the Cummer rate. The commission's letter to the Coast Line stated that they did not believe that it would be remunerative to the railroads. When that letter was written, they had not gone into the cost study; they were only assuming, I pre- [fol. 835] sume that it would not be compensatory, because just not long before that they had adopted what is known as Class P rates, and logs were being hauled under this class. This particular Cummer rate was quite a good deal lower than Class P rates. Therefore, without going into the matter or making a cost study themselves, they felt that it would not be remunerative and thought that other traffic would have to bear a part of that burden, and they didn't want that to happen, they wanted every commodity to stand on its own level and on its own footing."

"But when they saw fit, as I said, to publish those latters, naturally the Commission wanted to make an investigation to see whether or not that was remunerative to them."

"Now, the Commission doesn't take any position, or will not take any position, in reference to the changing or putting in the Cummer scale into Georgia, if they see fit. We have no objections whatever. We just don't want to be bothered in Florida with the present rates. We feel—in that letter, I should have said, it was written so that could not be misunderstood—that if you find that this rate is not remunerative, apply to the Commission and we will allow you to withdraw it. That is my understanding of the letter."

"Now, that has been in operation since 1914 up until the present time, and the Atlantic Coast Line Railroad I say I know for the last six years have not applied to the Railroad Commission for a change in the Cummer log rate scale."

[fol. 836] "Therefore, the Commission feel, after this investigation, which they will put their witness on the stand by the way that it is handled in Florida, that it is remunerative to them."

"I thank you, Mr. Examiner.

"Mr. Fred Davis: One question.

"Examiner Brown: He is not sworn.

"Mr. Fred Davis: You refer to letters that were read to Mr. Tench and Mr. Adair at Valdosta?

"Mr. A. S. Wells: They were written in 1914; they were filed in evidence and given the letters."

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Fred Pettijohn was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Fred Davis:)

My name is Fred Pettijohn; Tallahassee, Florida; accountant, Florida Railroad Commission. I have been with the Florida Railroad Commission since June, 1925.

From December, 1901, to August, 1908, with the exception of about six months, during which time I was employed as price clerk for a wholesale house, my employment was almost entirely in the operating or accounting department

of railroads. From September, 1908, to February, 1918, I was employed first as accountant and later as manager of the Mutual Audit Company of Louisville, Kentucky; from March, 1918, to July, 1918, as statistician for the board appointed by President Wilson to adjust railroad wages; from July, 1918, to March, 1920, as chief accountant of the [fol. 837] United States Railroad Administration; from May, 1920, to November, 1924, as vice-president of the Roberts-Pettijohn-Wood Corporation, a public accounting form at Chicago, Illinois; and from December, 1924, to June, 1925, as a public accountant in private practice at Chicago, Illinois. Since June, 1925, as accountant for the Florida Railroad Commission.

My first railroad experience was as clerk in the disbusements office. While employed in the disbursements office I was engaged on accounts relating to authorized expenditures in connection with building programs, additions and betterments and new equipment purchases; payrolls and material issues, vouchers, bills, joint accounts, store distributions, operations of sleeping and dining cars and the abstracts, ledgers and journals kept in the disbursements office; performance reports, costs in connection with authorized expenditures, and so forth. Prior to leaving the disbursements department I was what was generally known as general clerk, subject to assignment to any of the work connected with that office.

My next employment was in the general auditor's department. While there I was employed on work relating to the separately operated properties, stations agents' balance sheets, construction acocunts, accounts receivable, and so forth.

Then I was employed in the statistical department in the apportionment of ton-miles and revenues to divisions and [fol. 838] states, according to the classified commodities.

My last railroad experience was in the operating department as material clerk, which, on the Great Northern Railway, was to all intents and purposes, division accountant. However, while employed in the operating department, I occupied every position up to and including the position of material clerk with but one exception, namely, file clerk. During my employment in the operating department I was preparing from the sources of original entry, the charges to

primary accounts by divisions and states which were later entered on the general books. In addition, at various times I handled loss and damage claims, prepared overtime ststaments of train and engine employees, reduced to penalty payments classified according to the classified delays; made up statements as to tonnage and cars handled by operating runs, cars handled through yards, and so forth. I was connected with the Great Northern Railroad. During the statistical part I was with the Union Pacific at Nebraska and the rest of the time with the Great Northern.

The Mutual Audit Company was engaged in preparing, introducing and defending analytical and cost statistics and studies in connection with railroad, express and telephone rate cases before both Federal and State commissions. While with that company, I either assisted in the preparation or prepared and introduced the evidence in practically all the important cases in which the company appeared. [fol. 839] Some of the larger cases in which I either assisted or introduced evidence for the Mutual Audit Company, are the Minnesota Rate Case, Lake Cargo Coal Case —I. & S. 27—Western Advance Rate Cases, Ten Per Cent Case, General Investigation with respect to Coal from Ohio, Pennsylvania, and West Virginia to Lower Lake Ports, The South Dakota and Minnesota Express Cases.

Before state commissions there were three rate cases before the Florida Railroad Commission; two before the Alabama Commission; four before the Ohio Commission involving the cost of transporting coal from Hocking Valley and Number 8 Coal Fields; before the Illinois Commission in connection with passenger fares, one switching case and a case relating to the cost of handling coal; two passenger cases before the West Virginia Commission involving the reasonableness of passenger rates intrastate; the cost of switching at St. Joseph, Missouri, for the St. Joseph Terminal Company, and several other cases that I can not recall. As chief cost accountant for the United States Railroad Administration, I was directly in charge of the field forces employed in determining the cost of equipment purchased by the Director General of Railroads under contract with the several car builders. During the time subsequent to March, 1920, up until I was employed by the Florida Railroad Commission, I was engaged in public ac-

[fol. 840] counting. Some of the work I was employed on between March, 1920, and June, 1925, was:

Determining, for the Director General of Railroads, the cost of steel rails commandeered by the Secretary of War; preparing for some short line carriers their claims under Sections 204 and 209 of the Transportation Act 1920; preparation and introduction of evidence in Reduced Rates 1922; introduction and preparation of evidence in I. C. C. Docket 13494, Southern Class Rate Investigation; Cost studies in connection with the cost of switching live stock from the Union Stock Yards to the plant of Kingan & Company at Indianapolis, Indiana, before both the Interstate Commerce Commission and the Indiana Commission, Dockets 12349 and 5678, respectively; Pullman Rate Investigations; two cases involving the rates on pulp wood; an investigation as to the cost of repairing cars in railroad shops as compared to the cost at contract shops.

I have read Mr. White's testimony with respect to the cost of transporting logs from Perry to Eastport, Florida. I have examined Mr. White's Exhibit No. 25, Revised, which purports to show the estimated cost per loaded car, not including interest on property other than on equipment (Tes. p. 675). As to whether or not I have made a preliminary investigation as to the time that it would take me to make a cost study service in connection with the transportation of logs from Perry to Eastport, Florida, I made in- [fol. 841] quiries as to the manner in which accounts were recorded and reported to the General Officers at Wilmington, and previous to the initiation of this case I had discussed with the Comptroller of the Atlantic Coast Line Railroad Company the manner in which expenses were recorded. From the information thus obtained I estimated the number of days that I thought it would take to determine costs on a reliable and defendable basis. I estimated it would take to prepare the cost study 600 man-days, primarily because the Atlantic Coast Line Railroad Company do not record the expenses by States, divisions, districts and branches. This would necessitate the analysis of the entire operations of the system in order to allocate and assign expenses to the line Perry to Eastport. In addition, the Atlantic Coast Line Railroad Company does not assign locomotive repairs by classes of engines or by individual

engines, which would necessitate the determination of locomotive repairs by classes of engines and to classes of service. Certain statistics would also have to be prepared for that portion of the road over which the log trains are operated, which would entail considerably more time.

I did not undertake to determine what the cost of transporting logs from Perry to Eastport, Florida, would be. I analyzed the estimated cost as reflected on Revised Exhibit 25, introduced by witness White, of the Coast Line, for the purpose of determining the accuracy of such cost. The [fol. 842] method I used in making my analysis of this exhibit was as follows:

I first secured a copy of Mr. White's testimony, which I read in connection with his exhibits. I then made an examination of the switching operations in connection with the movement of logs from Milldale to Eastport and return of the empties. Next I visited the Jacksonville offices, and, in connection with Mr. White, satisfied myself as to the manner in which the train costs had been determined and also verified the information which I had previously obtained from the comptroller of the road with respect to the manner in which expenses were recorded, and then made a trip on the log train from Perry to Moncrief. After having viewed the situation with respect to the actual physical operations of the train and yard crew, I again reviewed the costs as reflected on revised exhibit No. 25 with particular reference as to the apportionment of trains and yard expenses to other services, the exclusion of interest as an item of expense, the application of indirect to direct expense, and especially with reference to the locomotive repair cost per mile as used by Mr. White. I have prepared figures in the shape of exhibits to show the result of my study or analysis of Mr. White's figures.

(Thereupon Intervenors' Exhibits Nos. 39 and 40, witness Pettijohn, were marked for identification.)

Page one of Exhibit No. 39 shows, under the same item letters as were employed by Mr. White on his Exhibit 25, [fol. 843] Revised, the direct costs as used by me in determining the cost of transporting logs from Perry to Eastport, Florida. Under the columns "Indirect Percentage—Cost" appear the respective percentages and the amount

of indirect operating expenses, which, in my judgment should be assigned to the respective direct cost items, and under "Total Cost" appears the sum of the costs reported as direct cost and as indirect cost. I will state the difference between the direct cost as used by Mr. White and as used by me, together with my reasons for making such additions or reductions. The difference between the amounts [fol. 844] used by Mr. White and myself are set up by items on the second page of my exhibit No. 39. Item "A" shows a reduction of $111.37, which amount is one-half of the difference between the total wages and the minimum wages which would have been paid, assuming that there would be no penalty payments. The minimum wages, northbound, as computed by me, were $52.28 from Perry, and $47.38 from Carbur. The southbound movement was $50.85 to Perry and $45.95 to Carbur. The southbound movement of $50.85 it will be noted is approximately the cost which is shown under the details of Item "A" of witness White's Exhibit 25 Revised. In this manner I computed that the penalty paid on these trains amounted to $222.74, which amount includes not only overtime due to delays, but also due to local rates being paid when these log trains perform switching service at three or more stations. Obviously none of the penalty paid for at local rates is properly chargeable against the log service, and only fifty per cent of the overtime paid for on account of meeting other trains could be properly assigned to the log train, the other fifty per cent being properly chargeable to the train for which it was delayed. I therefore arbitrarily assumed that fifty per cent of the penalty wages was a very fair and reasonable allowance to make to the log business.

The next reduction, under Item "B", aggregates $594.70, the details of which are also reflected on page two of my Exhibit 39.

The reduction of $476.41 is due entirely to reducing the time of the switch crew in handling loads from Milldale to [fol. 845] Eastport and empties from Eastport to Kings Crossing, from six hours to four hours per day. I viewed this switching movement and took a check of the actual time consumed in performing this service and found that the actual time, on the day that I watched the operations, was

a little less than three hours. I also interviewed the yard foreman of Brooks Scanlon Company at Eastport. From the information that I had, I was satisfied that from five to six hours a day was devoted to switching the Brooks-Scanlon business, but this five to six hours included the time spent in switching revenue freight other than logs, to and from the Brooks-Scanlon plant. After giving consideration to the movements as made on the date that I viewed the operations, which were less than three hours, in connection with the five to six hours consumed that day, I concluded that four hours per day was an ample allowance of time to assign to the switching of log cars.

"Examiner Brown: One day was the only observation you made?"

"The Witness: That is true; but I might say, Mr. Examiner, the item of switching these cars at Eastport is inconsiderable. When reduced to a per car cost, the addition or reduction, due to the difference of one hour in switching service, amounts to but 20.4 cents per car. So it is not a very considerable item when reduced to a per car basis."

The $12.06 reflected on page two of Exhibit 39 is entirely an item of interest which does not belong to any cost accounting analysis as interest on investment should be provided for through profit.

[fol. 846] The reduction of $106.23, identified as a correction in cost per mile for locomotive repairs, one hundred and twenty-four hours at $20.56 per day, as shown on page two of Exhibit 39, was determined in the following manner: The average cost of repairs per locomotive mile on the Atalntic Coast Line Railroad for the calendar year 1925 was 21.8482 cents. This is determined from the $5,961,-875.41 and reported as steam locomotive repairs opposite account 308 on page 306, Schedule 320 of the 1925 Annual Report and the transportation locomotive miles, 27,287,762, appearing on line 41 under Schedule 531 on page 508 of the Annual Report. To the average cost per mile, 21.8482 cents, I applied the percentage 90.1037, which percentage represents, in my opinion, a fair relation of the cost of switch engine mile to the average cost per engine mile of the railroad. This produced an average cost per yard en-

gine mile of 19.686 cents which, applied to one hundred and forty-four miles per day, procured a cost per day of $28.35, as compared to Mr. White's cost of $48.91, or a difference of $20.56 per locomotive day of one hundred and forty-four miles.

The reason why I rejected Mr. White's average cost for locomotive repairs of 33.966 cents per mile was that the average cost per mile used by Mr. White, namely 33.966 cents, was the average cost per mile for all classes of engines operated on what is known as the third operating district for a portion of the year. Every one who has ever [fol. 847] made an anlysis of engine costs per mile, knows that the cost per mile varies, not only as to classes of engines, but also as to different periods of the year and according to the standard of repairs and use to which locomotives are put.

Knowing that the average cost per mile, as used by Mr. White, was not reliable, and not being aware of any logical reason for the repairs to locomotives in this service being greater than the repairs for the system, I would not accept the average cost per mile as used, as correct.

The Coast Line do not record the cost of repairs to locomotives either by individual engines or classes of service, and it was therefore impossible for me to determine the average cost of repairs per engine mile obtaining on the Atlantic Coast Line Railroad for each class of service. The average cost of repairs per engine mile obtaining on the Atlantic Coast Line during the calendar year 1925 was about ten per cent higher than the average cost per mile obtaining on the Florida East Coast Railway Company during the calendar year 1925; and as I had previously determined the average cost of locomotive repairs by classes of service obtaining on the Florida East Coast Railroad, I then computed, by classes of service, the percentage relationship which the cost of repairs per engine mile for each class of service bore to the average locomotive repair costs per mile for all classes of service, and applied the percent- [fol. 848] age relationship so determined to the average cost per engine mile for all classes of service obtaining on the Atlantic Coast Line Railroad Company system.

The average cost of locomotive repairs per mile, in freight service, was 121.3442 per cent, and in switching

service 90.1037 per cent of the average cost per locomotive mile for all services on the Florida East Coast Railroad during the year 1925. These percentages were applied to the average cost per mile of 21.8482 cents on the Atlantic Coast Line, and produced a freight cost per mile of 26.5115 cents and a switching cost of 19.686 cents.

I will explain the decrease of $387.46 under Item "G" on page two of my Exhibit 39. $381.35 of this difference is due to elimination of interest as an operating expense. Interest is a charge against income and has to be provided for through profits. There is a difference of $2.61 due to adjusting the depreciation charges to a period of thirty days, instead of one-twelfth of a year. There is also a difference of $3.50, due to Mr. White having apportioned the depreciation on locomotives on the basis of the car miles rather than on the basis of train miles, train miles and locomotive miles being used interchangeably. Locomotive repairs and depreciation are properly assignable upon the basis of the mileage made by the locomotive in Brooks-Scanlon and Putnam service, instead of upon the basis of the car miles made in Brooks-Scanlon and Putnam service. The car mile percentage assignable to Brooks-Scanlon is [fol. 849] 67.60 per cent, as against 66.34 per cent assignable on a train mile basis.

I account for the decrease of $801.10 under item "E" on page two of my Exhibit 39 as follows: Of the $801.10, $701.30 is due to my using the average system cost of locomotive repairs per engine mile, equated by the application of the factor 121.3442 per cent which produced an equated cost of 26.5115 cents, as explained under Item "B", instead of using the 33.966 cents employed by Mr. White. The reasons why this adjustment is made were fully explained under Item "B". The remaining difference, $49.80, is due to the use of the factor train miles, 66.34 per cent, instead of the factor car miles, 67.6 per cent, train miles being the proper factor rather than car miles for the apportionment of locomotive repairs.

The next amount, $71.73, is prefaced by an asterisk. The $71.73 is in the nature of an addition in that by reducing the direct costs from $14,006.00 to $12,112.34, I have reduced the amount chargeable to other traffic from $532.00 to $460.27, and simply represents the difference between

the amount assigned to other traffic by Mr. White and by me.

As to the last item under account "C", amounting to $419.28, I will explain what this decrease consists of, of the $419.28, $416.50 is due entirely to elimination of the item of interest on cars. Interest is not a proper operating expense, and interest on investment should be provided for out of profit, and has therefore been eliminated from the [fol. 850] cost study. The remaining $2.78 is due to adjusting the depreciation on one hundred log cars to a period of thirty days, instead of one-twelfth of a year.

On page 2 of my exhibit, under the column "Decrease" there appears an amount of $2,242.18, which represents the difference between the estimated total direct cost of $16,893.00 reported under statement "K" of Exhibit 25 Revised, increased by $1.72, representing fractions discarded by Mr. White under the different items and decreased by $1,072.00 cost of car hire under contract and the $13,580.54 appearing on page 1 of my Exhibit No. 39 as total operating expenses, direct cost. In other words, it represents the difference between what Mr. White terms total direct cost less cost of car hire and what I term total operating expense, direct cost.

The $1,386,00 appearing as Item "G", cost of maintenance, roadway, and the $1,723.00, apearing as Item "H" cost of car maintenance, a total of $3,109.00, have been accepted by me without adjustment for the reason that I have no statistics with which to make a satisfactory apportionment of those expenses to this traffic. Under the column "Indirect Percentage" I have employed four different percentages for application to the direct cost as against the aggregate percentage of 27.7 per cent used by Mr. White and as reflected opposite Item "I" on statement "K" of Exhibit No. 25 Revised. I will explain, first, why, I did not [fol. 851] adopt the percentage used by Mr. White; second, what the percentages as used by me represent; and, third, my reasons for applying the percentages used by me rather than the percentage adopted by Mr. White. The manner in which Mr. White developed his percentage of 27.7 per cent is clearly indicated on sheet three of Item "I" of Exhibit 25 Revised, and simply represents the relationship of what he has classified as indirect to direct expenses for all

freight operating expenses. It is a cardinal rule of cost accounting that costs should be allocated according to the responsibility therefor. Obviously the indirect expenses under the general group of expenses, maintenance of way and structures, have no relation whatever to the direct cost obtaining under other general groups of expenses. In a like manner, the traffic being already contracted for, would not need any solicitation or traffic expenses, and no traffic expenditures should therefore be assigned against this traffic. Page one of my Exhibit 40 reflects by general groups the percentage relationship of indirect to direct freight expenses. Page two of my Exhibit No. 40 shows my assignment of direct and indirect freight expenses common to each and to both classes of service. In explanation of page two I might say that the only difference in the assignment of indirect and direct expenses as made by witness White under Item "I", sheet two of three, and as made by me, are that he assigned Account 374, Weighing, Inspection and De- [fol. 852] murrage Bureau, amount $94,807.00, and Account 418, Loss and Damage Freight, in amount $625,686.00, to indirect expense, whereas I have classified as direct expenses. My reason for classifying these expenses as direct is that no portion of the Weighing, Inspection and Demurrage Bureau are properly chargeable to this traffic, and it is my understanding that no loss-and-damage claims are paid with respect to this log movement.

The percentages appearing on page one of my Exhibit 40 opposite each of the general groups of operating expenses must be increased by the percentage shown opposite general expenses, namely, 3.813 per cent. In a similar manner, the percentages under transportation-rail line shown opposite yard and road respectively, must be increased by the percentages shown, namely, 11.8883 per cent and also the amount shown opposite general expenses, 3.813 per cent.

I will take up my item indirect cost and total cost and explain how they were determined. The amounts reported under indirect cost are arrived at by applying to the amounts shown under direct costs, the percentages shown under indirect percentage, while the amount shown under total cost simply reflects the sum of the amounts reported under direct costs and indirect costs. The total operating

expenses chargeable to the log service as reported on my Exhibit No. 39 is $16,352.56. The average operating expense per car predicated upon my assignment of expenses is $11.93. The average revenue per car from this log traffic [fol. 853] according to the witness Perrin, is $20.47. That would produce an operating ratio of $58.27. The operating ratio of the Coast Line on the system for 1925 was 69.11 per cent (Tes. pp. 688-689).

Hire of equipment is an item properly included in determining the reasonableness of a rate—Item "F". The manner of determining the figure of $1.49 for item "J", taxes, is shown in detail on pages 3 and 4 of my exhibit and I do not believe needs any further comment. The total cost which I found, amounting to $14.20, shown on my exhibit, reflects, in my judgment, what the cost of transporting a car of logs from Perry to Eastport and returning the empty car would be under witness White's Exhibit 25 Revised, had White confined his costs to items properly included in measuring the reasonableness of a rate, and had he further made a fair distribution of the hours consumed in switching log cars and on freight between Milldale and Eastport, and had he assigned the locomotive repairs to this traffic under a fair, reasonable and justifiable basis. From an operating standpoint this is an attractive and exceptional service for the reason that it is a regular service which permits of the direct assignment of equipment and considering the volume of tonnage to be handled it means considerably less number of cars and considerably less number of locomotives per traffic unit than any other class of equipment on the Atlantic Coast Line that I know of. I mean, by reducing the number of equipment units necessary to handle this traffic [fol. 854] in proportion to the tonnage. The average car miles per freight car day obtaining on the Atlantic Coast Line for the year 1925 was 29.4 miles, whereas the average freight car miles per car day with respect to the log traffic was 78.7 miles, or a little over 2.5 times as much. Likewise, the locomotive miles per locomotive days, freight service road, obtaining for the system was 66.9 miles, as against 99.4 miles obtaining with respect to the log service, an increase of approximately 50 per cent per car day. All this, in my opinion, tends to show this is a very exceptional service and cannot be reasonably compared to the general serv-

ice of the road and cannot be compared by the use of any common factor.

If that locomotive had to be engaged for the switching of traffic for those other three companies at Milldale it is not proper to charge all of the preparatory cost to one class of traffic alone, namely, logs. It is not proper to charge to it all the costs incident to getting the locomotive to Milldale itself before it is in position to perform any service for these other companies. I state as an experienced accountant that it is a good accounting practice to exclude interest, as I have excluded it in our Exhibit No. 39. Interest is never an item of cost in determining the reasonableness of a rate. We had that same item to contend with under Government contracts during the war, under cost of production; but very few accountants have ever proposed the theory of including interest as an item of cost.

(Exhibit Nos. 39 and 40, witness Pettijohn, were thereupon received in evidence.)

"Ex. Brown: It is understood Mr. Pettijohn will be cross-examined later."

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[fol. 855] A. T. GOETHE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination (Tes. p. 693).

(By Mr. Cotterill:)

A. T. Goethe, 623 Laurel St. My associates and I purchased the Epinger & Russell tract, so-called; sometimes known as the Montague tract. There is approximately 190 million feet in that tract. The rate of cutting that in order to exploit it economically is about 20 million feet a year. We are in the course of developing it at that rate. We are putting up two mills on it now for that purpose. My associates and I were entirely familiar with the conditions of that tract for a long period of time; for the last ten years. We cut out a large section adjoining that at Manning, Florida. I knew it was for sale at that time (Tes. p. 694).

I was not induced directly or indirectly by anybody connected with this litigation to purchase that tract. I purchased it nearly ninety days ago. I had an opportunity, if I wished to do so, to have built a mill at some other place than I am now building it. I located our mill in the timber rather than at Jacksonville and ship logs by railroads because I thought it would be to our advantage to do so from the standpoint of cost. Even if I were sure that there would continue in effect the so-called Cummer scale I would rather have it in the woods. It is the practical, normal place to construct the saw mill. That is the way I think about it; that is where I always constructed mine. I have been engaged in the log mill business about thirty [fol. 856] years. If I had been located at Valdosta, Georgia, I would not have given consideration to the purchase of this timber on basis of the main line rate from the timber to Valdosta, because if I were not in that tract of timber Jacksonville would be the logical place to put it. Valdosta would not be the logical place because I would be a good way from market. It wouldn't pay.

Cross-examination (Tes. p. 696).

(By Mr. Price:)

What I meant by the main line rate from the timber to Valdosta was that you could not afford to ship those logs to Valdosta and saw them; you couldn't do that at all, because you would be getting away from the market. Here is the logical place to put that saw mill, in Jacksonville, and ship it where you want to (Tes. p. 696). What I mean by main line rate is just the freight rate. It is all main line that you pay to the railroad I suppose.

Manning is 41 miles on the Coast Line Railroad going south on the Gainesville division; I think it is 41 miles, it is right near there. I couldn't tell you if it is on the Dupoint line. Manning lays east of Lake City, I would say as a guess, about 40 miles (Tes. p. 697). Sort of east, as near as I can guess at it now. I couldn't say for certain about that.

I did not inspect any other timber with a view of pur- [fol. 857] chasing anywhere on that division of the Coast Line in Florida, not for a long time I haven't Maybe

in years gone by I might have; I don't remember about that because I was inspecting so much from time to time; but I haven't in the last few years. I am not familiar with timber lands between Live Oak and the Georgia State line, and I have never inspected any timber in the section from High Springs to the Georgia State line. I don't know anything about it, whether there is any timber in there or not.

"Q. You say that you would not—if you had been located at Valdosta—have given consideration to purchasing this timber on basis of the main line rate, as you call it. Do you mean by that whether it be the Cummer scale or any other scale? (Tes. p. 698).

"A. Why, it would not have paid at all to ship logs to Valdosta, an immense amount of timber like that; a man can't afford it; you have got to ship it where you can get rid of it at the best market" (Tes. p. 699).

"Q. Do you think it would be an unreasonable presumption for that man at Valdosta to consider buying timber in Florida?"

"A. Well, if he had a market and handled thirty thousand feet a day it would not be unreasonable on that size tract; but I can't see where he could have that size tract around Valdosta. That is my opinion. I do not believe that he could dispose of it in Valdosta. I don't believe I could do it if I had a mill there. He might know more about saw [fol. 858] milling than I do and be able to do it but I couldn't do it."

Redirect examination (Tes. p. 700).

(By Mr. Cotterill:)

If the mill already in Valdosta had a capacity of 25 or 30 thousand feet a day, or up to 50, for that matter, and such a mill owner acquired a tract of timber aggregating 190 million feet, he could not possibly handle that 190 million feet of timber with a mill no bigger than that. He ought to cut up seventy-five to eighty thousand feet a day any way. I can't see that there would be any advantage in paying transportation costs on that amount of logs necessary to cut out the timber when there would be no outbound advantage in the freight rate. It looks like it will be throw-

ing money in the sewer to me. He would go broke before he got started good.

Recross-examination.

(By Mr. Price:)

That is my judgment. As to whether I know what that man in Valdosta had in mind if he said he was going to increase his operations to 200,000 feet a day, I don't know what he is going to do. As to whether it is possible—he could do it if he wants to, but I don't see how he could afford to mill all of that timber in Florida. That is his business. I don't know anything about his business; but I don't see how I could do it out there, and I don't believe that anybody else could do it. If he had a market,—well, I don't see how that is possible at Valdosta because that is an inland town. I don't know anything about Valdosta (Tes. p. 702).

(Witness excused.)

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[fol. 859] Jacksonville, Fla., Jan. 20, 1927—
9:00 o'clock a. m.

Met pursuant to adjournment.

FRED PETTIJOHN was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Cross-examination.

(By Mr. Carl Davis:)

I stated that interest on investment should be provided for through profit. I don't believe that is a rather loose use of the word "profit". As to what system of accounting under which I find interest provided for from profit, you should figure interest from return on investment, and your return on investment should be made through profit of the company rather than through cost of operation.

My definition of cost of operation is, operating expense plus joint facility and equipment rents and taxes. My

definition of profit is, the difference between what it costs to buy something and what the selling price is.

I am familiar with the Interstate Commerce Commission classification of operating expenses as applied to railroads. As to whether interest derived from profit is in that: Interest on investment does not appear in the I. C. C. classification in any place. Interest against moneys paid or money received is a charge against income and is not included in operating expenses.

[fol. 860] "Q. It is a charge that has to be taken into consideration before you determine profit, isn't it?"

"A. Not interest on investment. It does not appear on the I. C. C. classification what provision is made for it (Tes. p. 704).

"Q. What does appear on the I. C. C. classification as to interest?"

"A. Interest on money borrowed and interest on money loaned, which are charged or credited to income account; interest on construction, which is a charge to investment, real estate or personal property."

"Q. Then if you borrowed money and invested it in property, interest on the money borrowed would have to be provided for before you could determine whether you had made any profit on the use of your peoperty under the I. C. C. classification?"

"A. It would have to be considered in determining whether the company had actually made any profit; but the amount of the interest which would properly be capitalized would not necessarily be the interest which was paid for the money borrowed."

"Q. Suppose that you had invested one hundred thousand dollars in a piece of property, railroad property. Money is worth six per cent, let us assume. Your gross revenue is forty thousand dollars. Your gross expense is thirty-eight thousand dollars. How much profit have you?"

"A. You have two thousand dollars under that hypothetical question."

[fol. 861] "Q. And that is what you call profit?"

"A. If you include in your——"

"Q. Could you answer that 'yes or no'?"

"A. No, I wouldn't answer it that way."

"Q. All right?"

"A. If you include under your thirty-eight thousand dollars the items which I have enumerated in addition to operating expenses the two thousand dollars is the only profit which you have applicable to your investment."

I have included in addition to operating expenses in my Exhibit 39, hire of equipment, joint facilities and taxes. As to whether, in my opinion, when I have paid expenses, including hire of equipment and joint facilities, and I have $2,000 left as a return on a $100,000 investment, I figure that I have made $2,000 profit for that year, I say that my profit is $2,000. Profit is what I have to pay return on my investment out of. Then, if I were operating a railroad and had borrowed that $100,000 from somebody else, and made a profit of $2,000 for a period of 10 years, I would probably wind up in the receivers' hands for lack of paying the interest; under that theory, I would certainly. As to how that theory differs from mine, well I don't agree with you that you have only made $2,000. In the hypothetical question I was asked how much profit I did make and I said $2,000—that is correct. Then, under that hypothetical question, and as I construe profit, I would be $4,000 a year shy of paying my interest, assuming that I paid 6 per cent interest. And under my theory, and having made a profit of $2,000 a year, [fol. 862] I would most certainly go broke; but I am not admitting that your $40,000 gross earnings and $38,000 expenses applies; I just answered your question on the assumption that this was the profit you had; but I am not applying that to the transportation of log-.

"Q. I am trying to find out what you mean by a profit. If I understood you, you told me that in that hypothetical case, as you understood the word profit, I would have made two thousand dollars profit each year; is that right?"

"A. That is correct; you have made the two thousand dollars profit."

"Q. Before I had even paid my interest?"

"A. Well, as previously stated, your interest on your investment in my opinion has to come out of your profit."

"Q. Well, then you are at variance with the Interstate Commerce Commission, are you not?"

"A. I don't believe I am."

"Q. Will you show me where in the accounting classification of the Interstate Commerce Commission, interest on money borrowed is a deduction from profit?"

"A. Mr. Davis, we are not talking about interest on money borrowed any place. As previously stated to you, interest on money borrowed is an income charge. It is not given consideration by the Interstate Commerce Commis-
[fol. 863] sion in the fixation of rates in any case that I ever knew of. And interest on investment is an entirely different matter from interest on money borrowed."

"Q. That is entirely possible; but if I understand the purpose of your exhibit, it was to show whether or not the handling of these logs at these assumed figures was a profitable transaction. I understood you to say that in determining profit, you paid no attention to income on money borrowed and invested in the property; is that right?"

"A. That is correct."

"Q. I then asked you whether or not under this assumed case, with the expenses computed exactly as you have computed the expenses and including all that you have included, with a gross income of forty thousand, and these expenses computed as you have computed these amounted to thirty-eight thousand dollars, how much profit you had made; I understood you to say two thousand dollars?"

"A. Well, I have not computed any figures at thirty-eight thousand dollars."

"Q. I did not say you had. I was including the items that you have included. Suppose that they amount to thirty-eight thousand dollars, including every item of expense that you have included—not the figures; your gross revenue is forty thousand dollars; and your expenses, computed as you have computed these expenses, thirty-eight; how much profit have you made? You sand two thousand."

[fol. 864] "A. That is the difference between them. You have two thousand dollars out of which to pay return on investment."

"Q. That is your definition of profit?"

"A. That is everybody's definition of profit—the difference between your selling price and cost. I never heard of profit or interest on investment being included as an operating expense."

"Q. I did not ask you that. Have you ever read in the Interstate Commerce Commission classification the definition of the account profit and loss?"

"A. Yes, sir."

"Q. What does that account mean?"

"A. Your profit is the profit which is attributable to profit after all deductions, other than operating expenses and taxes, have been taken out."

"Q. One of those deductions is interest, isn't it?"

"A. Yes; but that is not what the Interstate Commerce Commission uses in measuring the reasonableness of a rate of return on investment."

"Q. That is true, but I did not ask you anything about that. I want to know in what sense you used this word "profit" when you said that interest on investment should be provided for through profit."

"A. Exactly in the sense that I have used it——"

"Q. Yes, sir, that is——"

[fol. 865] "A. Just a minute. Just a minute, please. I am enumerating the items for you, Mr. Davis. On page 301 of the annual report of the carrier there appears a return of the amount of net railway operating income, the net of the return on line seven, which is railway operating income, plus lines 15 to line 20, inclusive, which includes rent from hire of freight cars, rent from locomotives, from passenger cars, from boating equipment from joint equipment, and joint facility rent income; less that appearing on lines 35 to 40 inclusive which is hire of freight car debits, rent for locomotives, rent for passenger train cars, for floating equipment, for work equipment, and joint facility rents. The net figure is the net railway operating income, which is used to measure the return upon investment. The item of income or the item of interest does not appear in that computation, or is not provided for by the I. C. C. in measuring return upon income or return upon investment."

"Q. Now, down to that point in that classification, where have you found the word 'profit'?"

"A. There is no 'profit' appearing in there."

"Q. Exactly. Then where do you go in that classification before you do find the word 'profit'?"

"A. You go down to where you transfer your net income to profit and loss."

"Q. Before you get to that then you have charged to income interest on money borrowed, have you not?"

[fol. 866] "A. Yes, sir, and credited to income, income from funded and other securities."

"Q. Therefore, in arriving at that classification, you have to take into consideration interest on the money borrowed, do you not?"

"A. That is true."

"Q. Then what is your justification for saying that interest is to be provided for through profit, assuming that the money is borrowed and invested in the operation?"

"A. You are talking about two different kinds of interest. One of them you are talking about is interest which is a charge or credit to income; the other you are talking about is interest which is a return upon investment; and at no place in the I. C. C. classification does there appear any account for reflecting the interest on the investment."

"Q. What should be the difference in a proper accounting classification between interest on money borrowed and invested in the property, and interest on the investment, as you use those terms?"

"A. Well, interest on money borrowed is an actual expenditure to the company."

"Q. Yes?"

"A. Interest upon investment is a computation purely and simply; if you make it you get it, if you don't make it you don't get it or would not have to account for it."

"Q. In your judgment that last mentioned interest which [fol. 867] you have described is not to be considered in determining the reasonableness of a rate, is that true?"

"A. No, I did not say that, nor I wouldn't say that."

"Q. Well, then, why shouldn't you consider it in this case."

"A. Because it is not a proper item to consider in costs, and I am showing the costs."

"Q. Then you are not showing expenses, you are showing costs?"

"A. I am showing operating expenses plus the cost used in measuring the reasonableness of a rate. Now I have not undertaken to determine what your return on the investment in property used in the transportation of logs or any other commodity is."

"Q. Would it be fair to say that for purposes of this exhibit you are not interest- in that?"

"A. I think if you will read my statement, Mr. Davis, you will see that I simply took Mr. White's costs, and stated with the information which was available, and with what I thought should be done with his cost figures, they should be revised in the manner in which I revised them. I have attempted to say what I thought the rate should be."

"Q You were asked this question yesterday: 'The total cost which you found, amounting to $14.20, shown on your exhibit, reflects, in your judgment, if I understand you correctly, what the cost of transporting a car of logs from Perry to Eastport and returning the empty car would be under witness White's Exhibit 25 Revised, had White confined his costs to items properly included in measuring the [fol. 868] reasonableness of a rate and had he further made a fair distribution of the hours consumed in switching log cars and on freight between Milldale and Eastport and had he assigned the locomotive repairs to this traffic under a fair, reasonable and justifiable basis, is that correct?' You said, 'Yes, that is my opinion '?"

"A. Yes, sir."

"Q. Do you remember that?"

"A. Yes, sir, and I still say it."

"Q. Then does it follow from that that you have included here all of the items that you think should be included here —all of the items that you think should be included in determining the reasonableness of a rate?"

"A. Yes and no."

"Q. That is a peculiar answer."

"A. Yes, it is."

"Q. Is it one or the other?"

"A. No, it is not one or the other. It has to be a qualified answer. In the first place, there does not appear at any place in this tertimony or in this case what the interest on the investment devoted to this traffic is; but the Atlantic Coast Line Railroad, under an operating ratio of 69.11 per cent, has had a return of over five per cent upon the total investment in its property."

I might say, using the investment in road and equipment, plus the improvements on these properties, appearing on page 200, under accounts 701 and 702 of the Interstate

Commerce classification, there is a return of over 8 per cent on the investment in road and equipment plus the im-
[fol. 869] provements on leased railroad property. In my judgment, that is not a fair measure of the return; I think that is a little high. As to whether the book investment, the figure that he has written there, plus those items, is the proper investment on which to compute a fair return, no; they should be expanded by including therein the investment in the leased properties that are operated, to make this return. As to whether I find myself, then, at variance with the Supreme Court in saying that you are entitled to a fair value on the property, I have not expressed an opinion on that at all. I quoted you what the return was on the investment. I never said anything, and the question was never raised, as to the return or what was the proper basis for computing a return.

I referred to the fact that the Coast Line has earned some return on investment plus some other figures which I have mentioned; under the effective accounting classification with respect to operating expenses, that, in my opinion, is a proper basis for determining the reasonableness of a rate. As to whether the principles which underlie such a proper accounting classification as I have just described are the principles which I have applied here in my Exhibit 39, I have followed the I. C. C. classification entirely. As to whether the profit to which I refer, in saying that interest is to be accounted for out of profit, is not the profit that is in the Interstate classification as profit and loss, I have used the term "profit" generally; and as I have used the term "profit", it represents the difference between the revenue and those items which go to make -p net railway operating income.

[fol. 870] The taxes which I have dealt with on page 4 of my Exhibit 39 are not in the report to the I. C. C. made by the Atlantic Coast Line for the year 1925 but are in the report to the Florida Railroad Commission. They are the same up to a certain number of pages, but commencing with the 700th page, it seems that they did not report to the Interstate Commerce Commission but report strictly to state commissions.

I have computed the percentage of Federal income taxes on the basis of net revenue from railway operation. I have

computed the percentage of Florida taxes on the basis of revenue operating expenses. I have computed the percentage of capital stock tax on some other basis. I will explain the reason for using three bases on that page. Allow me to say, first, that I think you are mistaken. I have only used two bases. In the first place, I have assigned the corporation income tax upon the basis, or upon the theory, rather, that the net revenue from railway operations is the only available data we have for computing the corporation's income tax for the system, to the operations of any individual state. Now, with respect to Florida taxes, they are predicated upon a fixed valuation per mile of railroad, plus the taxes on the equipment actually in Florida at a given period, predicated upon the original cost of that equipment, depreciated to the present time; and not having the value of the road-bed and equipment that is used exclusively in that business, it appeared to me that the proper manner of treating taxes was in the same manner as you would treat a capital or a general expense, that is, in relation to what the [fol. 871] other expenses were. And I might say that had I applied the total taxes of the system to Florida upon the expense basis, I would have charged but $1.21 to taxes rather than $1.49 as I did charge there. I use in one place net revenue and in another place operating expenses because one of the taxes is on revenue and the other is not. Your corporation income tax is dependent upon your net income. Now, the items that go to make up the income upon which you pay taxes can not be allocated directly to the respective states; as a general proposition, they are a system charge and they should be prorated to your states upon some basis; and I have used in lieu of having any other available basis, the net revenue from railway operations.

Certainly, interest is a deduction in determining the income tax, but, as I previously stated, there is no way of applying interest to the operations of this traffic, and there is no way of applying interest received or interest paid to the respective states. This figure that I have used here in computing the percentage for corporation income tax does not contain any attempt to sub-divide the income under the various states. It does not have anything in it at all about income, except as income is included in revenue. As to

whether, had I used income rather than revenue, I would have produced a different result, well, as I have just saod, it is impossible for the Atlantic Coast Line or anybody else to make this computation upon the income applicable to the State of Florida. It is correct that I have not attempted to apply income for the State of Florida; I have taken the revenues from the system. I couldn't take the revenues [fol. 872] for the State of Florida because it is impossible to get the revenues for the State of Florida from the railroad company's records. As to what the State of Florida has to do with it from the income point of view, when it has nothing to do with it from a revenue point of view, it has to this extent; If it was based upon income, I would have to determine the income upon the transportation of these logs, and that would necessitate the assignment of all income debits and credits from the system back to the transportation of these respective logs, and of the money received fr-m them, which would be a physical imposibility.

I attempted to determine the revenue on these logs. It appears on page 4: 6.715 per cent of $8.54, the difference between what you received per car and my average cost per car.

"Q. I grant you, but the 6.715 is based upon percentage of net revenue for railway operations for the system and corporation income tax for the system, isn't it?"

"A. Yes, sir, and the percentage is applied to the net revenue from railway operation on these logs."

"Q. But since the federal income tax is not based on revenue, there was no necessary reason for your taking revenue, rather than some other figure, was there?"

"A. Yes, sir, I think there was. I think the most appropriate figure you have when you come to deal with the income tax applicable to a specific commodity is your net revenue from railway operations."

"Q. Rather than your net railway income, which is the basis of the tax?"

"A. Yes, sir, for the simple reason that it is impossible to determine your net income attributable to a specific commodity."

[fol. 873] "Q. Any more impossible than to determine your net revenue? That is where I am at a loss."

"A. Yes, sir, for this reason: that the Atlantic Coast Line Railroad doesn't even go to the extent of determining its operating expenses by state lines. Now, in order to apportion this little revenue, it would be necessary to undertake to determine for the State of Florida the net income applicable for it, and it wo-ld further be necessary to spread all the income debits and credits to that traffic."

"Q. In spite of the fact that you don't attempt to make any such spreading of revenue, you can take the revenue for the system but you couldn't possibly take the income from the system as a basis?"

"A. If I took the income from the system as a basis, I would have nothing to apply it to without having first determined the income from this specific commodity."

"Q. You have already determined that from page one,—you claim to have?"

"A. No, I have not. I have determined the net revenue from railway operations, and I have further determined the net railway operating income."

"Q. Well now, wherein do the necessities of that case differ from the necessities of the Florida taxes, so that in the Florida taxes you used operating expenses as the criterion?"

"A. Well, as I stated before, I didn't have the value of the property devoted to this specific traffic, and I therefore treated taxes—as is very common—as a general expenditure, and applied the same ratio of taxes to cost as [fol. 874] applied to the whole State."

"Q. Then you say that the last compilation on that page is not different from one of the others, that there are only two bases?"

"A. That is correct, except to this extent; perhaps I had better say in determining the U. S. Government taxes, other than corporation income tax, I applied that tax to the State of Florida on the basis of the average miles of road operated; and having applied it to Florida on the average miles of road operated, I then reapplied the Florida proportion of these taxes upon the basis of Florida operating expenses."

It is correct to say that I testified that the computation that I have made in here with respect to items of revenue and income were taken from the report to the Florida rail-

road commission for the year 1925 by the Atlantic Coast Line. The result would have been the same had I applied the figures which were reported to the Interstate Commerce Commission as far as the income tax is concerned. The result would not have been the same as far as all the figures are concerned, for the reason that commencing with sheet 600 in the report to the Florida Railroad Commission there are only the statistics that are applicable to the operations in the State of Florida. The Interstate Commerce Commission did not get a copy of these statistics.

I testified with respect to the net railway operating income for the entire system, yes. That is shown in the report to the Florida Railroad Commission, yes. It is also shown in the report to the Interstate Commerce Commis- [fol. 875] sion. And I might say that the first page to page 524 of the report to the Florida Railroad Commission deals with the operations and statistics of the entire system, and it is the same report that is made to the Interstate Commerce Commission; in other words, the report to the Florida Railroad Commission contains the same item as net railway operating income as the report to the Interstate Commerce Commission.

[fol. 876] "Mr. Perry: If your Honor please, I would like to make a brief statement to preserve the continuity of the witness just leaving the stand. In view of the statement made by Chairman Wells of the Florida Commission on yesterday, I simply desire to direct attention to the reason of the Georgia Public Service Commission for bringing this application, as fully outlined in the testimony of its rate expert, Mr. E. M. Price."

"While on my feet I would like to suggest the importance of counsel, Judge Cassidy, to furnish a list of the members of the Georgia-Florida Saw Mill Association as shown on Exhibit 37 introduced by Mr. Reeves on yesterday. He stated that certain mills shown here are not members of the Association, Judge Cassidy. I think as the Georgia-Florida Saw Mill Association is an intervenor, that it would be proper to show just the members as shown on this Exhibit 37. It will be no trouble?"

"Mr. Cassidy: I will be glad to furnish that information. Do you want it merely for your own information, or do you think it should show in the record?"

"Mr. Perry: I think it should show in the record."

"Mr. Cassidy: I will be glad to furnish it today."

"Mr. A. S. Wells: Mr. Chairman, I would like to add, if it is admissible, one thing to my statement on yesterday, to clarify it. In making this investigation, it was not for the purpose of trying to show that this rate should become effective interstate; it was not for that purpose; it was [fol. 877] only for the purpose of ascertaining whether or not this traffic, as it is now conducted in Florida, is remunerative. We did not go into the other phase of it, and I want the record to show that plainly—that it is not for the purpose of having this particular rate put in interstate."

"Examiner Brown: You are referring to the cost study testified to by the preceding witness?"

"Mr. Wells: Yes, sir; this cost study is made on the present operation of logs in this State."

"Mr. C. Davis: May I ask is that the cost study that was introduced by your witness?"

"Mr. Wells: Yes, sir. That was only made on the operation of logs in this State, as they are handled now, and not a cost study of what it would be interstate possibly in a different way; as they are handled now in the State of Florida on the A. C. L. Railroad."

"Mr. Gwathmey: Mr. Chairman, it may be understood, I assume, also that this study is to be considered as made in relation only to the handling of logs over the A. C. L. Railroad?"

"Mr. Wells: I so stated."

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J. S. FOLEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Rutherford:)

My name is J. S. Foley. I reside in Jacksonville, Flor- [fol. 878] ida, and I am engaged in the lumber business (Tes. p. 728). I am vice-president and general manager of the Brooks-Scanlon Corporation. Its plant is at Eastport, Florida, near Jacksonville. I succeeded Mr. M. L. Fleishel

as manager of this company in 1919. We have complete saw and planing mills, together with all necessary facilities, and in addition, own the town site of Eastport. Among our facilities at Eastport we operate an industrial railroad which does all plant switching. The principal business of Brooks-Scanlon Corporation is manufacturing yellow pine lumber. The present plant at Eastport commenced operations in 1915, as I recall it, the plant being first operated under the name of Carpenter-O'Brien Company, and in 1917 changed to its present corporate name, Brooks-Scanlon Corporation (Tes. p. 729). Our logs are transported from our own holdings and transported to Perry and Carbur by our own crews, where they are taken over to the Atlantic Coast Line in solid trainloads and from there transported by the Atlantic Coast Line to Eastport, where they are again turned over to our industrial crew. We have 460,000 acres situated in Taylor, Jefferson, Madison, Dixie, Lafayette, Alachua and Wakulla counties. It totals over one billion feet of standing timber.

After the cars are made empty at our Eastport plant, our industrial engines place them on the delivery track, all coupled up ready for the Coast Line switch engine, which takes the empties to Kings Crossing; from there a road [fol. 879] crew handles them, either to Carbur or Perry, where they are placed on the delivery track, from which places our industrial crews handle the empties to the woods for loading and return to the delivery track at Perry and Carbur, respectively. No switching is necessary or is performed by the Atlantic Coast Line at either of these places (Tes. p. 730). That is a regular movement nightly of loads and empties. It is practically a movement of loads and empties every working day of the year. We have specially equipped cars for handling logs in the service of the Brooks-Scanlon Company at Carbur, Perry and Eastport, of 175, 75 of which are owned outright by the company and 100 owned by the Atlantic Coast Line. There is a joint delivery track at Eastport and the Brooks-Scanlon Corporation owns the remainder of the track. We furnish the Coast Line water facilities at Carbur without charge.

With respect to maintenance and repair of car equipment, at different places there are provided inspection forces, the

principal ones being at Perry, Carbur and Eastport. We bear a substantial part of such cost of inspection, the object of which is to determine the condition of the equipment as it passes from the Coast Line to our exclusive possession. Under the system prevailing, when the equipment has passed such inspection and goes into our exclusive possession, we are responsible for, and must pay, the cost of any repairs made necessary by reason of damage or breaks which occur while the cars are in our possession; such arrangement being modified, however, in cases where subsequent investigation discloses that the break was due to only [fol. 880] a concealed owner's defect. In fairness, it should be said that our willingness to bear a substantial portion of such inspection expense, as well as a liberal contribution to the expense of maintaining the equipment, is in our own interest, because it facilitates and expedites the movement of the equipment. However, the total expense of the carrier is reduced by such an arrangement, resulting on both direct and indirect benefit which tends naturally to lower the costs (Tes. p. 732).

The plant of the Brooks-Scanlon Corporation at Eastport has been enlarged since I have been connected with that organization, namely, in 1923. We purchased additional timber in October, 1922, in the vicinity of Perry, totaling two and three-quarter million dollars, enlarged our mills at Eastport, built additional houses, increased our handling facilities, calling for an investment of substantially a million dollars, constructed entirely new camps in this timber at Scanlon, Florida, bought logging equipment, rails and locomotives, totaling an investment at that point of approximately half a million dollars; or making a total investment based on the movement from Perry to Eastport of this additional timber of over four million dollars. Our proposed enlargement and the resulting increased movement of logs was discussed with the Atlantic Coast Line. Mr. Scanlon and myself, before making these enlargements, discussed with Mr. Murchison, general superintendent, and Mr. Page, superintendent of transportation of the Coast Line at Jacksonville, the question of hauling this additional [fol. 881] timber from Perry. We went thoroughly into the matter with these gentlemen and discussed with them the facilities of the Coast Line to handle this additional move-

ment. We were assured by these gentlemen that we would receive the same class and character of service from Perry as we were receiving from Carbur. We were led to believe, at this conference, the additional movement would not in any way affect our existing arrangement for the handling of the logs and that the movement from Perry would be handled similar to that from Carbur. We most certainly would not have made these investments had we not then felt that the then existing log rates would be maintained. I am familiar in a general way with the character of freight traffic on the line from Perry to Newberry. In my opinion the greater part of the tonnage consists of the movement of logs, lumber, naval stores products and supplies, all of which are incidental to the lumber industry.

The last tabulation in October of last year shows that we had 726 employees at Eastport. This number varies slightly from time to time. Our tabulation of Scanlon and Carbur, made at the time we checked up the Eastport employes, showed that we had 263 then at Carbur, and 347 on the payroll at Scanlon, making a total of 610 at these two points. This means a total of employees at the mills and [fol. 882] logging camps of 1,336 men.

We own the town site at Eastport. We own the houses situated in the town site (Tes. p. 734). These houses are occupied by men at Eastport exclusively employed in our mill. The employes pay a nominal rent and we furnish them light and water and keep the property in repair. We own all the houses at Scanlon that are occupied by our employees. We furnish them their house rent free at that point. We own the houses at the Carbur log camp. These are occupied by the employees exclusively. On all but what we term permanent houses the rent is given to our employees without charge; and on permanent houses at Carbur we collect a nominal rent. To the tenants of the permanent houses we furnish light and water free (Tes. p. 735).

There are no circumstances which now exist or which, so far as I can judge, will exist, that will cause or enable substantial shipments or movements of logs from Florida to Georgia. The supply of commercial stands of timber in Florida are owned and manufactured by lumber companies who have long since built and are operating mills of large capacity in Florida, and are balanced with the amount of

timber owned. There is no available timber in any commercial quantity that could be acquired. It would be necessary to purchase the timber from one of those now operating, which would necessarily mean the purchase of the mills along with the timber. It would seem improbable that such a purchaser would dismantle or dispose of a mill in Florida which he had already bought, and build a new one at some [fol. 883] other location in Georgia. Suppose, for any reason, one or more of the existing mills in Florida were to cease manufacturing, or that the owner of the Florida mill and the timber supplying this mill, which is situate- in Florida, would be willing to sell his timber lands without disposing of the mill, a Georgia lumber man would, in my opinion, build a mill in the Florida timber, the capacity of which would be governed entirely by the quantity of timber acquired, because there must be a balanced relationship to conduct a profitable operation; otherwise, the expense of carrying the timber, in the way of interest and taxes, would necessarily make the marketing of the lumber unprofitable, unless it were worked out on an economical relationship. In the event our company was willing to sell its remaining uncut timber without disposing of its existing mill, any purchaser, to manufacture this timber, would have to invest at least as much or more as our present mills cost, and at least equal in their capacity. As to the location of a mill of the size that I have described, if Georgia interests did acquire a commercial stand of timber in Florida, in my opinion, no lumber man financially able to purchase a tract of that size would give any thought to locating a mill at any Georgia point under these circumstances. He would necessarily locate it in the timber. I know of no such tract situated in north Florida near the Georgia line not owned by Florida operators (Tes. p. 537). We have a timber buyer who has been in the field for the past seven years, [fol. 884] endeavoring to purchase timber in north Florida. Based on his information and reports, we know of no such tract. He is our regular cruiser, W. E. McCain. He has reported his activities over the period that he has been in our employ. His reports do not disclose any timber of any commercial stands situated in the counties of Lyon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Suwanee, Lafayette, Dixie, Columbia, Gilchrist, Union, and Baker, except that

already owned by Florida operators and being manufactured by them. As a lumber operator of long experience, I certainly would not locate and construct a mill at an interior point in Georgia to which your log supply would have to be hauled by rail over a distance of 150 to 170 miles (Tes. p. 738). It doesn't matter whether the existing interstate rate between Florida and Georgia points, or the existing Cummer scale is in effect. We would not haul logs from one hundred and fifty to one hundred and seventy miles under present Florida intrastate rate, due to the fact that the cost of transporting the logs under the present intrastate rate is greater than any saving that might be occasioned by any advantage in the outbound freight rate on various products. Therefore it is evident that it is distinctly to the advantage of the owner of the timber to locate his mill at the timber. There are other practical reasons why it is beneficial to have a mill located at the timber. The item of logging would be materially reduced, in the way of lesser amount of tracks to be built, lighter con-
[fol. 885] struction, lighter equipment, less equipment required, closer supervision, better control of the daily requirements, and less labor—in fact, much cheaper than the requirements in building tracks, using heavy equipment in the way of locomotives and machinery to load cars that will pass the minimum weight required by the Atlantic Coast Line, and the necessity of having additional equipment, entailing additional investment to provide regularity in the delivery of full tonnage for the main line railway. I am now speaking of the present method of handling timber from our tract by the Atlantic Coast Line to our Eastport mill. There are further reasons why it would be more practical to operate our timber tract by a mill in the woods. There are many other economies in being located in the woods, so far as logging supply is concerned, which constitutes a large part of the total cost of producing lumber. I could discuss these various operating expenses at greater length, but when I had finished I would have said no more than in the beginning, that is—any practical lumber man would give no serious thought to the acquisition of timber lands in Florida, where they are now located, and attempt to conduct his mill operations in the State of Georgia. There is no available commercial supply of timber in the State of Florida not

already owned by Florida operators and being manufactured by them, that can be logged and hauled over the Atlantic Coast Line from the State of Florida into the State [fol. 886] of Georgia for manufacturing by some mill in the State of Georgia.

"Q. Then, as I understand from you, there is no available commercial supply of timber in the State of Florida not already owned by Florida operators and being manufactured by them, that can be logged and hauled over the Atlantic Coast Line from the State of Florida into the State of Georgia for manufacturing by some mill in the State of Georgia?"

"A. There is not."

"Q. Now, Mr. Foley, it is natural to inquire why, in view of all you have said, it is a fact that there are lumber mills in the vicinity of Jacksonville and Palatka which are transporting logs by railroad under the Cummer scale comparatively long distances, and why, if they can do that, a mill in Georgia could not do likewise if it had the Cummer scale from Georgia to Florida" (Tes. p. 740).

"A. It is true that there are mills in Eastport, Jacksonville and Palatka hauling logs on the Coast Line a considerable distance under the Cummer scale. This is due to [fol. 887] the fact that the mills are already in existence at these points, namely, Jacksonville, Eastport and Palatka. The mills have been constructed a considerable length of time, and were so constructed at a time when conditions were entirely dissimilar to those now in existence. Large amounts of money have been invested in these existing plants. Now, as to explaining why such investments were made, and have been continued, notwithstanding the disadvantages of being located so far away from the sources of timber supply, I emphasize, first, the location of those Florida mills at tidewater. That means when the mills were constructed at tidewater there was cheaper water transportation as well as cheaper rail transportation than now exists for the outbound products available. That circumstance was so important that we acquired, and still own, our water carriage facilities. The directions of movement were, at that time, more particularly eastward and the bulk of the business going that way. There was also a different

system of outbound rail freight rates applicable from Jacksonville on rail movements of lumber than now prevails. That entered into the matter. There was also, at that time, a different labor situation, which made it less disadvantageous to be located from the timber supply. Those conditions have all changed in recent years. The water transportation costs have not only materially advanced, but very much out of proportion. The outbound railroad rates from Jacksonville have been advanced more comparatively than the rates paid by many of our important competitors in the [fol. 888] interior of Florida."

"Q. Then why do you continue to operate at tidewater?"

"A. It is a choice of evils. Our investments are there and we can-ot voluntarily destroy them, notwithstanding the disadvantages of location. I say very frankly, in my opinion, if we were starting over again under present conditions, we most certainly would locate in the timber rather than where we are" (Tes. p. 742).

"Q. Mr. Foley, in the event the existing Cummer log scale were increased in this proceeding to the present Alabama-Georgia scale, would you still continue to operate your mills at Eastport?"

"A. No, we absolutely would not."

"Q. What would you do?"

"A. Dismantle our existing mills at Eastport, Florida, so far as it is possible to do so, and construct a new mill in our timber, using in this construction such parts of the equipment as we could from this Eastport plant."

"Q. Have you made a survey as to a possible location of mill sites in your existing timber holdings?"

We have n. some examination. We have gone into this matter and determined, or at least attempted to determine, that it is to our best interest to have a location which may be served by two or more railroads, as we would not desire in the future to place ourselves in the same predicament which we are now confronted with. Dismantling our Eastport mills and moving our mills into the woods would compel us to assume a loss of over three million dollars in connection with the movement of the mills from their present location to the woods, as well as loss of houses, churches, schools, and all other buildings, that now constitute a mod-

[fol. 889] ern town site, namely, Eastport. Eastport would be entirely dismantled if we moved our mills. There is no industry there other than that industry. If we moved to the woods we of course would have an advantage of a saving in the log freight and in the logging end (Tes. p. 743). If our mills were moved from Eastport to the woods the city of Jacksonville and vicinity and the Eastport neighborhood would lose the purchasing power of a payroll from $17,000 to $18,000 per week. It was due only to those special and peculiar circumstances that the Florida plants described were located at tidewater, in the first place, and that even now, under changed conditions, if it were not for the size of the existing investments which would have to be destroyed, it would be better and more economical to have the mills in the sources of the timber supply. I can think of no possible reason why an enterprise in Georgia should seek to acquire timber supplies in Florida and locate in the interior of Georgia on the Atlantic Coast Line. It would be disastrous if such an attempt should be made. It is not intended to say that every one of the trees in this area in Florida is owned by those companies, not at all. Some farms have a few acres of some kind of timber. While, as a general rule, the farmers would prefer not to sell their trees, there are, of course, circumstances under which they would sell the right to cut all or some part of them; but in the aggregate it would be a small quantity (Tes. pp. 744-[fol. 890] 745). The commercial situation with respect to such small tracts is that the farmer will at various times cut "blocks" or "billets," which, strictly speaking, are not logs, because they are different in dimensions. They are obtained and handled in a different way and move under different freight rates. To some extent there is a production of logs, as such, in those small tracts forming parts of the farmers' lands. It is an entirey different business. To begin with, there is no regular lay out, such as logging roads, because there is not enough timber to justify it. As a rule, these scattered splotches of timber are surrounded by timber holdings of large operating companies, and there would be no practical means of access to the railroad by the construction of logging tracks. And, in addition to that, the only practical method of utilizing timber of that kind is by putting in a small portable saw mill, which naturally in-

volves no logging operations, and consists only of moving the mill, rather than the logs, and produces only small quantities of lumber. This is the usual method employed (Tes. p. 745). In all these discussion- I have been speaking only of timber lands located on the Atlantic Coast Line and mills located on the Atlantic Coast Line in Florida and Georgia, south Georgia, and, as to the second part of your question, of course we have been discussing the matter only as it concerned so-called "West Florida," and not the southern peninsula of Florida. I have done that because I suppose nobody would suggest the possibility of such a thing as a movement of logs from the southern Peninsula [fol. 891] of Florida to any point in Georgia.

I heard the testimony of Mr. Jackson at the Valdosta hearing. I heard Mr. Jackson state on the witness stand that he had been considering the purchase of a tract of timber lying between Lake City and Jacksonville and consisting of something like 190 million feet. We had this tract of timber offered to us for several years, or brought to our attention, and maps and details and price and terms submitted in April, 1926, by Mr. Montague; he met us here in the Mason Hotel. This was in Apil, 1926. The hearing at Valdosta, I believe, was in October, 1926. Assuming that I operated a mill of ten million feet capacity per year at Valdosta, Georgia, and that I had the opportunity to buy the specific tract of timber referred to by Mr. Jackson, I would not continue to operate the Valdosta plant and transport the logs from this tract to that point, I would unquestionably locate the mill in the timber. My decision would be influenced, first, by reason of the fact that the expense incurred in connection with moving a mill of ten million feet capacity would be very small, compared to the additional freight charges which I would be compelled to pay upon the unusable portion of the logs; second, the southern Florida territory is a very profitable territory in which to market the finished product, and with a mill located in the [fol. 892] woods I would be able to compete with this traffic; whereas, if located at Valdosta, having paid a logging rate and a proportionately higher rate on the finished product, I would be at a great disadvantage in this market, namely, the Florida market. In any event, from a practical standpoint it would be impossible to log this particular tract of

timber and profitably manufacture the same with a mill having a capacity of only ten million feet annually. The minimum annual capacity of a mill that could profitably operate this 190 million feet would require a mill at least having 20 million feet capacity or larger. The list of mills that I have seen on the Atlantic Coast Line in South Georgia does not disclose a single mill having a capacity as much as 20 million feet per annum.

The officials of the Atlantic Coast Line have never at any time prior to the hearing intimated to me that they were dissatisfied with the adequacy of the log rate under the Cummer scale, either directly or indirectly. Of the adequacy of this rate we have always been led to believe, and under the strongest impression, that it was very satisfactory business to the Atlantic Coast Line Railroad (Tes. p. 748).

We had a conference with certain officials of the Atlantic Coast Line at the station in Jacksonville, in Mr. Delano's private car, on July 24, 1926. There was present Mr. Delano, Mr. C. McD. Davis, and Mr. Perrin, as I recall. The sole purpose of this interview was to discuss the rates under attack in this proceeding. None of them stated at [fol. 893] the time that the Atlantic Coast Line was dissatisfied with the then existing log rate on the Atlantic Coast Line in Florida. It is my recollection that Mr. C. McD Davis of the Coast Line stated that the position of the Coast Line at the hearing of this case would be to justify the reasonableness of the interstate rate on logs between Florida and Georgia, and to defend the present intrastate Atlantic Coast Line rates on logs by giving the historical side of the establishment of these rates (Tes. p. 749-750). At this conference Mr. Fleishel was largely the spokesman for the lumber interests represented and, as I recall it, most, if not all, of the features were discussed. None of the Atlantic Coast Line officials indicated at any time during the conference that the log rate referred to was not profitable to that line (Tes. p. 750). My understanding when I left this conference as to the position of the Atlantic Coast Line was that they would justify the situation as it stood, as per their answer to the complaint.

I recall that part of the testimony when Mr. Davies stated that to haul logs from Florida into Georgia for a specified

distance would cost him approximately $34 for a car of fifty thousand pounds as compared to a rate of $10.50 per car or fifty thousand pounds for the same distance under the Florida intrastate rate. It requires approximately 10,000 pounds of logs to produce 1,000 feet of lumber. On a $34 rate it would cost Mr. Davies $6.80 per thousand feet to ship a thousand feet of stumpage from Florida to Georgia, [fol. 894] the distances he testified to yesterday. With a rate of $10.50 per car of 50,000 pounds, as Mr. Davies testified the Florida scale was for this particular distance, a car it would cost $2.10 per thousand feet of lumber. I think Mr. Davies was correct in his statement that with the Cummer scale he would have considerable freight. He would save approximately $4.70 per thousand feet on this calculation. The general price, as I understand it, of Georgia stumpage used in manufacturing roofers is approximately one dollar per thousand feet. It is a very low quality of timber. We have timber offered us for pine stumpage in Georgia other than that used in manufacturing roofers at from three to four dollars per thousand feet. The north Florida pine stumpage runs from seven to eight dollars a thousand (Tes. p. 752). With these prices existing then, as a matter of fact, I don't think Mr. Davies would be benefited if the Florida intrastate were made interstate from Florida to Georgia. The cost of Florida stumpage, plus the freight, even under the Cummer scale, would bring his cost of logs higher than the Florida price of stumpage—or the Georgia price of stumpage, plus the lowest rate, the highest rate.

I am experienced with the cost of logging cypress timber. We have a connection with a Cypress company from which we are familiar with that logging cost of operation. There is very much difference between the cost of logging cypress and pine. Cypress usually grows in swamps and requires very heavy construction of grades—railroad—and runs substantially double the cost of logging pine. The cost of [fol. 895] logging cypress is practically double the cost of logging pine. It would be almost impracticable to log a small stand of cypress, because the method of getting it out is so expensive that you would have to have sufficient quantities to justify building a track to it (Tes. p. 753-754).

We cut 100 million feet per annum. We market our timber and plank in the open market, the Seaboard ports. That pine timber is 6 x 6, 8 x 8, and 10 x 12, large structural. The flooring, ceiling, siding, and finish, is marked substantially in Florida. The real competition we have to meet in the eastern markets is the yellow pine mills in the southwest and the Pacific Coast lumber commonly known as fir.

As to whether we meet competition from the Georgia mills in the eastern market—we don't make the class of lumber that the Georgia mills make (Tes. p. 754). I think the Georgia mills ship some flooring to the eastern markets, the finished product, but they don't ship any timber that I know of in the eastern markets. I never hear of the Georgia mill products in the eastern market.

It is an established fact that when a saw mill cuts its available timber it must either shut down or acquire additional holdings. In the event that additional timber cannot be acquired then the only alternative is to shut down. That is the only possible thing they can do. As to the testimony offered with regard to a great many of the Georgia mills being compelled to shut down, due to a lack of timber supply, that condition also exists in the State of Florida. We have had several large tracts of timber offered us in south [fol. 896] Georgia. It is a fact that mills in Florida have been compelled to shut down when they cut out their available supply of timber (Tes. p. 755). The operators on the south Georgia branch of the Coast Line that have been operating for any period I should think would be deemed practical operators. If they could acquire timber even though their present holdings were about cut out, I should think that they would purchase that timber and continue to manufacture if they wanted to remain in the saw mill business. The inference was made in yesterday's testimony that these particular south Georgia saw mills were about cut out, or practically cut out, and would have to have additional timber; also that there was no additional timber available in Georgia; and for that reason these mills wished to come to Florida and purchase timber and haul it to Georgia, and would do so in the event rates were equalized. I think there is available timber in South Georgia. We have had timber offered us; some we have investigated. That is adjacent to the Coast Line. One lot substantially of 200

million feet (Tes. p. 756). I understand it is true that there is a tract of timber situated in Thomas County, Georgia, within fifty to seventy-five miles of the larger portion of the mills in south Georgia on the Coast Line that is not now being manufactured and not owned by any manufacturer or lumber operator. I have heard the amount in this tract put as high as 400 million feet. Yes, there is a substantial amount of timber on the market in south Georgia. Some [fol. 897] of this is the second growth. Then we have, I think, one tract offered us of original growth yellow pine timber. There is a little bit of cypress in there, but substantially all is pine. I have with me the offers made. One of them was in Clinch and Echols county that I looked at myself with our Mr. Cain. We have another tract near Allenhurst that we sent a man up to look at, as I recall (Tes. p. 757).

Cross-examination.

(By Mr. Perry:)

The 400 million feet I speak of in Thomas County is original growth. We didn't buy that because we weren't at the time prepared to bring it to Eastport and we had not considered building any additional mills. The cost of freight rate from Georgia into Florida on that timber, as compared with the Florida rate would be an item of consideration if we decided to manufacture it in Florida. I wouldn't say I would not buy it up there as long as I could get all of the timber I needed in Florida, on account of the freight rate; we might want to manufacture it in Georgia and build a mill there. We had not fully decided that.

"Q. You could not buy it at Thomasville, as a practical and economical proposition, and ship it to Florida as long as you could get available logs in Florida, on account of the freight rate?"

"A. No, I wouldn't say that; we had not gone into that feature" (Tes. p. 758).

"Q. Well, is it or not true you would not buy it in Georgia [fol. 898] and ship it to Florida as long as you can get logs in Florida on a much less freight rate?"

"A. It would undoubtedly be better to manuafcture it in Georgia."

"Q. You could not buy it in Georgia and ship it down here?"

"A. I haven't figured the freight rate; I don't know."

"Q. How many million feet of timber that you consider merchantable do you have on this four hundred and sixty thousand acres of land, did you say?"

"A. We have a little over a billion feet."

"Q. A billion feet yet to cut?"

"A. Yes, sir."

"Q. It is your view that if the Georgia manufacturer wants to participate in the manufacture of lumber out of logs drawn from Florida that he should move to Florida?"

"A. That is the economic way to manufacture, yes, sir."

"Q. He cannot ship them into Georgia, manufacture them into lumber and compete with the Florida manufacturer, can he?"

"A. It would not be the economical way to manufacture to haul the log into Georgia."

"Q. Yes, but the question is, he cannot ship them into Georgia—buy the logs in Florida, ship them into Georgia and manufacture them, in competition with the Florida manufacturer, can he, without absorbing or charging off to loss the difference in the freight rate?"

"A. Well, I don't think he could. It would not be economical to do so" (Tes. pp. 759, 760).

[fol. 899] I said the largest mill I knew of in Georgia cuts eighteen million feet per year. That is about 60,000 feet a day. That is on this list, I examined that at Albany—Reynolds Brothers Lumber Company; they had a million and a half a month. There was another mill at that time. That mill of Jackson Brothers is of ten million capacity. Now later I was asked if there was a mill of larger capacity and I mentioned this of eighteen million (Tes. p. 760).

The cost of moving our mills into the woods or incident thereto, would be over three million dollars. We would still have some of our machinery but a good part of the saw mill construction would be lost; that is, the foundation. [fol. 900] Many pieces are all right where they are, but when you take them out you have got to replace them. The total investment is in the neighborhood of two and a half million dollars, and it would cost three million dollars to

move a property valued at two and a half million dollars. The chief expense is not building new foundations. I only mentioned it as incidental. As to what else there would be—you have got fifteen months' cessation of operations, idle; you would lose your possible earnings; you would lose interest on your entire investment; you would lose the investment in your standing timber which was idle—your taxes, your overhead (Tes. p. 761). I estimate it at 15 months to dismantle and rebuild at the other plant. The chief loss would be in the interest, taxes, overhead, dismantling, freight on the stuff down to the new location, rebuilding and replacing, loss of the rate—the depreciation and the loss of the earnings during that period. You would lose the interest on the entire investment and in the meantime you are paying taxes on it. Well you would lose interest on the entire timber investment that is lying idle. I am satisfied it would cost me a loss of three million dollars to move a plant of the approximate value of two and a half million dollars; yes, sir (Tes. p. 762).

Eastport is twelve miles east of Jacksonville on the St. Johns river.

"Q. Are you going to move your property to the woods anyhow, regardless of the outcome of this rate adjustment?"

"A. No, sir, we have not reached any decision yet."

[fol. 901] As to whether I disagree with Mr. Fleishel that it is proper to do that as an economic proposition, we have an entirely different economic proposition from Mr. Fleishel. It differs in that we have an investment in a township, docks, and railroads. His pine mill is leased. He leases from the Cummer Lumber Company; he would not lose his investment because he can step out into a new location. I consider as an economical proposition it is desirable for Mr. [fol. 902] Fleishel's interests to move to the interior if the present scale of rates are to be maintained; I certainly do. They have no investment in mills that manufacture yellow pine at Jacksonville; it is leased. We are different; we have a town site (Tes. p. 763). So the question then of equalization of rates, intrastate Florida and interstate Georgia-Florida, is, I think, immaterial to Mr. Fleishel, if

he is going to move. I think he so stated; it did not matter to him under the interstate rate. But it is of great concern to me; undoubtedly so.

The cruiser that is going to testify is still in our employ. He has been at this location practically seven years. And it is on his inspection that I base my conclusion that there is no available timber in north Florida accessible to the Georgia mills. We have other cruisers at various times but Mr. McCain is constantly in our employ (Tes. p. 764). They are working north Florida and south Georgia; all in through there, that territory. When I stated that there are desirable tracts of land within 75 miles of Valdosta and Climax I did not give any distances; I spoke of several tracts of timber in Georgia. That was one particular tract within 75 miles of Valdosta. These particular tracts I was speaking of were in Georgia.

The percentages of our business that moves by water and by rail run yearly between 30 and 35 per cent by water and 60 to 65 per cent by rail. I am referring to outbound lumber manufactured at Eastport.

As to whether I stated sometime ago I was already hunting another location to carry our mill to, I stated we had investigated a location to carry our mill to. We are unde- [fol. 903] cided as to whether to change the location of our mill regardless of the rate adjustment. We are going to stay where we are if the same rate is maintained. We cannot help it; we have got a terrific investment there and we can't lose it (Tes. pp. 765-76[redacted] It is not desirable to move, regardless of the rate, on account of our investment; but if we had it to do over again, we would. When I stated that I had already, due to the condition that we are facing, been looking for a new location, I was referring to the possibility of a change in this rate.

"Q. You stated also that if there were to be a change in the freight rate, taking away from you this so-called Cummer scale, that you would just have to cease operation, particularly at the location you are at. Could you or not then move—eliminating this cost of relocating your property—could you or not move your property to the woods and operate at a profit?"

"A. We couldn't move our property to the woods without absorbing that loss, in any event."

"Q. Just forget the loss for a moment. You could move your property to the woods there to compete and meet the competition of the other fellow similarly situated?"

"A. If we were building a mill without an investment, yes, sir" (Tes. pp. 766-767).

I should think that all the timber in Florida, as a matter of course, will eventually be manufactured into lumber that is now owned by these different enterprises, regardless of the freight rate. There is no commercial stand of timber in north Florida, that I know of. The stumpage in Florida is much higher than the stumpage in Georgia. The Florida stumpage is seven to eight dollars per thousand feet. The Georgia stumpage runs from one to four dollars, according to quality (Tes. p. 767). As to whether I am comparing vir-
[fol. 904] gin timber in Florida with second growth in Georgia—the lower price would be largely second growth in Georgia. The original growth in Georgia is still lower in
[fol. 905] price than the Florida price for original growth. There would be a saving to Mr. Davies at Climax, Georgia, of $4.70 per thousand if he had the Cummer scale extended into Georgia—I took his own calculation yesterday, yes. Three or four dollars per thousand is considered a fair profit on manufactured pine lumber, everything considered. This saving that Mr. Davies would make if the Cummer scale were to be extended into Georgia would give him a reasonable profit on the manufacture of lumber alone, if he could save that.

"Q. Well, you say he would save that much if the Cummer scale were extended into Georgia?"

"Mr. Rutherford: Mr. Perry, you mean that that is the difference between the interstate scale and the Cummer scale?"

"Mr. Perry: In other words, that is what I meant."

"Mr. Rutherford: Well, that wouldn't be a saving if I understand your question."

"The question is, Mr. Foley, if Mr. Davies should acquire logs in Florida today and pay the interstate rate, and if he were given the opportunity of paying the Cummer scale extended Florida into Georgia, he would have an advantage

of four dollars and seventy cents per thousand on the manufactured lumber, compared to what he would have under the interstate rate. That is what you said?''

''A. The difference in the saving, according to the thirty-four dollars and ten dollars and a half car, I compute as a difference of four dollars and seventy cents a thousand.''

''Q. Yes, sir.''

''A. That was on his calculation'' (Tes. pp. 768-769).

''Q. So that is what he would lose——

Mr. Cassidy: Mr. Perry, just for clarity, please——

''Q. —one compared with the other?''

''Exam. Brown: Mr. Cassidy?''

[fol. 906] ''Mr. Cassidy: I just wanted to ask Mr. Perry if he would include in that the cost of logging that Mr. Davies would have to pay over in Florida? Were you assuming that it does not cost anything to get the logs to the railroad?''

''Mr. Perry: No, sir; I am dealing with the freight rate alone.''

''Q. I am assuming, Mr. Witness, that the relative cost and everything else is the same; but between the interstate rate Florida to Georgia and the Florida rate there is a difference of four dollars and seventy cents saved by having the Cummer scale extended into Georgia.''

''A. The calculation of ten dollars and fifty cents, and thirty-four dollars, a car, shows a difference——''

''Q. Which is four dollars and seventy cents?''

''A. Yes'' (Tes. pp. 768-769).

There is practically no roofers manufactured in Florida termed ''roofers''; they are practically all manufactured in Georgia. We do not come into competition with that. We ship into Florida and into south Florida particularly, yes, sir. The Georgia manufacturers ship some into Florida [fol. 907] also. To meet competition with us on this Florida business they would have to absorb the difference in freight rate, where it is higher than ours (Tes. p. 770) if they marketed in that same location, yes. And if they pay a higher rate on logs into the mill than we pay into our mill, that has to be absorbed also to compete with this

Florida business. Figured on Florida, whatever their cost may be. He has to stand whatever the lumber costs him [fol. 908] (Tes. pp. 771-772). He has to stand what the freight is as a part of the cost, certainly.

"Q. Why, of course. Then, if the Florida manufacturer has a lower rate on logs than the Georgia manufacturer for the same distance, the Georgia manufacturer is at a handicap for that difference and has got to absorb it, hasn't he?"

"A. No, sir, that is not true."

"Q. Tell us why isn't it true?"

"A. The Georgia manufacturer to start with, has a lower value on stumpage than a competitor in Florida——"

"Q. You are getting your logs in Florida, of course?"

"A. Yes."

"Q. And if the Georgia man got his logs from Florida wouldn't he pay the same rate?"

"A. Yes."

"Q. Well, then, wouldn't he be at a disadvantage in paying a higher freight rate than you paid?"

"A. If he undertook to market in the same markets."

"Q. Yes. Well, he is marketing in the same market, to a degree, that the Florida manufacturer is?"

"A. The Georgia manufacturer usually markets in his own market, which is Georgia."

"Q. He is entitled to sell his product anywhere he wants to, isn't he?"

"A. Oh, absolutely, without a doubt."

"Q. And then if he is to be put on an equality with you, either he has got to have the same freight rate that you have, or he has got to absorb the difference, whatever it is, higher or lower—I mean the difference is in Florida as compared to Georgia; isn't that true?"

"A. He has got to stand whatever it costs him to produce lumber, however he does it."

[fol. 909] I stated that I was in competition with lumber shippers from the west. I feel foreign competition of imported lumber also. There is indirectly several lumber importers (Tes. p. 773). We don't consider that so important yet, but it is becoming to an extent that we might have to take notice of it. The western distributor predominates and makes the market in the eastern market. We are meet-

ing their competition, rather than they meeting ours. Of the sixty-five per cent of our shipments that move by rail, practically none of those shipments move to points served [fol. 910] by water carriers. In other words, all of our rail shipments are to interior points, with this explanation; we ship, of course, a great deal to Miami and to West Palm Beach; but I wouldn't consider that that would be classed as a water shipment (Tes. p. 774). The greater part of that 65 per cent moves into Florida under normal conditions; I would say at least 50 per cent of the total, which would leave 15 per cent of it which moves to Georgia and other territory. The other 15 per cent will move into north Georgia, North and South Carolina, and a little into Virginia.

The 35 per cent of our traffic that moves by water is delivered from Baltimore to Portland, Maine. None of this 35 per cent goes to the Florida ports. I testified that three or four dollars profit is a reasonable profit per thousand on lumber. As to whether or not that is our present measure of profit under this Cummer scale, there isn't any profit at the present time under the Cummer scale on the present market.

Redirect examination.

(By Mr. Rutherford:)

As to interest on our entire investment over a fifteen months period, the timber investment alone is $450,000 for fifteen months. I am not interested in the existing interstate rate from Georgia to Florida. It makes no diffeernce, none whatever, to me what that rate is. We would not have the slightest objection one way or the other to seeing the existing Cummer scale that is existing in Florida put in on the interstate business from Florida to Georgia (Tes. p. 776). We are not concerned in it. It would not harm us in the least.

[fol. 911] As a matter of fact, I should say it is not possible for any Georgia operator to buy timber in commercial quantities in north Florida.

If it were to be the outcome of this case that we were compelled to take such a loss and cease operating under

the Cummer log rate scale entirely and we were then to relocate in the woods, and if there was then any competition between us and the Georgia manufacturer, we would be in a decidely better position to compete with him than we are now. From that aspect of it, then, aside from the movement which might ensue and which would cause a loss of three million dollars, the Georgia manufacturer would be decidedly in a worse position than he is now if he competes with our mill. If he does not compete then he gets no further benefit. That is true (Tes. pp. 777-778). We are not making a profit at present. That is not peculiar to our plant; it is a general condition.

Recross-examination.

(By Mr. Perry:)

The rate of interest I figure on when I estimate the interest for 15 months on our timber is six per cent. I did not say that about 50 per cent of our output is flooring. I can't give you the per cent in flooring, but 65 per cent of our product is in the form of ceiling, flooring, siding, finished (Tes. p. 778). And the other 35 per cent is dimension timber, six by six, eight by eight, ten by ten, and twelve by twelve. As to whether any other material that we manu- [fol. 912] facture, other than the structural lumber of heavy timbers, finds its market in part of Florida, Florida is our logical market and we market substantially all of that class of lumber in Florida. This is 65 per cent of the entire output, I think. Occasionally we find a market for some of our lumber in Georgia and we market some of that class of lumber in Georgia and South Carolina and some in Virginia.

My understanding is that the mills of the Hebbard Cypress Company at Hebbardville and Hopkins, Georgia, on the Waycross & Southern Railroad, connected with the Coast Line at Waycross, have cut out that timber and are no longer operating. That is my understanding (Tes. pp. 779-780).

(Witness excused).

E. W. SCHERER was thereupon called as a witness and, having been duly sworn, testified as follows:

(Intervenors' Exhibits Nos. 41, 42 and 43, witness Scherer, were marked for identification.)

Direct examination.

(By Mr. Rutherford:)

My name is E. W. S-herer: I reside in Jacksonville, Florida, and I am employed by the Brooks-Scanlon Corporation, in charge of their land and timber, tax and assessment matters, townsite records and insurance, and supervise the records pertaining to the movement of our logs and log receipts at Eastport, and the logging and production account-[fol. 913] ing (Tes. p. 781). I have been connected with the Brooks-Scanlon Corporation at Eastport since 1920. Prior to that time I was employed by the Brooks-Scanlon Company at Kentwood, Louisiana. My employment there started in 1908, and I have since been identified continuously with the Brooks-Scanlon interests with the exception of about two and a half years. I have prepared a statement showing the uncut timber of the Brooks-Scanlon Corporation available to the plant at Eastport, Florida. This statement was taken from our land and timber record. I made it up myself and it is based upon the original cruise of the timber made at the time or prior to the time the timber was purchased. This statement has been marked for identification as exhibit No. 41. The exhibit is practically self-explanatory, but I wish to call attention to these figures. It shows, by township and range, our cruiser's estimate on pine and cypress timber owned by the Brooks-Scanlon Corporation and available to the plant at Eastport as of August 31, 1926. The exhibit shows that when logged, the pine and cypress timber will be equivalent to approximately 186,800 carloads of logs, and at the present prevailing freight rate, per car, this will produce a revenue of $3,922,800 to the Atlantic Coast Line, if logged and transported to Eastport.

I have prepared a statement showing the log shipments and freight paid on same from Carbur and Perry to Eastport, Florida, for the years 1915 to 1926, inclusive. This

exhibit is marked for identification as No. 42 (Tes. p. 783). [fol. 914] The statement shows, by years and the aggregate for the period, the number of cars received at Eastport, board feet transported, freight charges paid, the average freight paid per car and per thousand feet, and the average number of board fet transported per car. This statement is also practically self-explanatory, but I wish to call attention to the substantial increase in the number of board feet transported per car in 1924, 1925 and 1926, as compared to 1919, this increase averaging aproximately 25 per cent. In column four, under the item of "Freight" is shown the amount of freight paid to the Atlantic Coast Line Railroad only covering the shipments of logs originating at Carbur and Scanlon. There is no freight or transportation cost included in this item covering the movement of the logs from Scanlon to Perry; in other words, that is the freight paid to the Atlantic Coast Line Railroad from Carbur and Perry, but it includes the logs originating at Scanlon.

"Q. Please refer to the first page of the exhibit headed "Summary property investment of Brooks-Scanlon Corporation," and under this summary state what is the significance of the columns headed "Dec. 31st, 1922," and "Additional Investment."

A. The purpose of so dividing the investment is primarily to show the additional investment made subsequent to December 31, 1922, as a direct result of the purchase of the additional timber in the vicinity of Perry, and the resulting increase in capacity at the logging camps and at [fol. 915] Eastport in the ways of mills, plant facilities and so forth, as referred to in Mr. Foley's testimony."

I merely wish to call attention to the columns referred to; under the column headed "Dec. 31st, 1922," we show a total investment of $1,976,757.69; and under "Additional Investment" referred to above, $1,621,483.91—almost one hundred per cent increase of our investment. This investment does not include our timber purchases. In order to take care of the purchase of timber in the vicinity of Perry, the Brooks Scanlon Corporation actually increased its total investment substantially $1,600,000. The total investment as of August 31, 1926, $3,598,241.60 represents

the actual cash investment in our plant and equipment but does not include our investment in timber and land (Tes. p. 785).

(Thereupon Intervenors' Exhibits 41 to 43, inclusive, were received in evidence.)

The property investment of the Brooks Scanlon Corporation in timber and land is as follows: The company owns approximately 400,000 acres of land and something over a billion feet of timber. The value of the land and timber owned by the company at this time is something over seven million dollars. It is practically all timber, because we have our land set up on our books at a nominal value of one dollar per acre (Tes. p. 786).

[fol. 916] Cross-examination.

(By Mr. Perry:)

The value of the timber is arrived at at the present price and not the cost. This timber was acquired, I think, as related in Mr. Fleishel's testimony, and in Mr. Foley's testimony he related the acquisition of this substantial body west of Perry in 1922. The question of any change in freight rates, one way or the other, I think is not going to have anything to do with the value of our land and timber.

As to my Exhibit 42, under column "Average Freight per car," for 1926, $21.34 per car, the quantity of logs coming from Carbur and the quantity originating at Scanlon and shipped from Perry is practically the same. The Carbur distance is 145 miles, and it is my understanding that Perry is 15 or 16 miles further. That is substantially 145 and 161 miles. The movement is from substantially the same territory. There is very little difference. My recollection is, my memory serves me right, Scanlon is fifty and a fraction from Carbur and forty nine and a fraction from Perry. In utilizing the timber that we have, I don't think the distance would be increased over the distance we hauled last year. It is my impression that the stands of timber that we have now will move substantially over this same route, and about the same distance. In 1921 we have an average "Freight per Car" of $22.85; then in 1925 it runs down to $20.70. Then an increase,

slight, of 64 cents, in 1926 over 1925. That variation re-
[fol. 917] sults from the way we load our cars. It is the weight. If we load a heavier car the revenue per car is greater (Tes. p. 788).

Redirect examination.

(By Mr. Cotterill:)

It was in the year 1922 that there was a general reduction in freight rates amounting to ten per cent. I haven't that before me, but I would judge from the drop in the average-per-car that that probably was the time. It is a natural conclusion from my statement that in reality our loading increased in years subsequent to the rate reduction. My answer took into consideration the 10 per cent reduction in rates in 1922. My answer referred principally to this last year, because in 1925 and 1926 we operated under that same rate, and the increase in 1926 was due to the heavier loading; but in the prior years the reduction in rate enters into it (Tes. p. 790).

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[fol. 918] L. C. Crockett was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

My name is L. C. Crockett; Jacksonville, Florida. I am, and for a number of years past have been, engaged as forest enginer and timber cruiser; such work involves estimating standing timber, both as to quantity and quality, mapping given areas, giving advice as to feasibility and probable cost of logging, and in short it may be said that my work is the equivalent of general consultant respecting lumber operations (Tes. p. 790). My services are available as a consultant generally. My experience has extended over a period of seven to eighteen years in Florida, in addition to which I have also spent approximately four years on the Pacific Coast, and have made special investigations in Latin-American countries. I have on a num-

ber of occasions been employed, and am always available for employment, for Georgia interests. It can fairly be said that nearly all the desirable timber in Georgia has been cut out, there being left, with few exceptions, only comparatively small and scattered areas of timber sections. Much of that is second growth and low-grade stumpage and is being utilized more particularly by small or so-called roofer manufacturers. As to Florida, confining the statement to what may be called north and west Florida, and certainly so far as concerns areas served by the Atlantic Coast Line Ralroad north of Palatka, the same gen-
[fol. 919] eral situation as to the cutting out of timber prevails. The only remaining uncut timber in commercial volume belongs to, and it is being cut out by, the large lumber mills in Florida owned by Brooks-Scanlon Corporation and their associates, Burton Swartz Cypress Company of Florida, the Putnam Lumber Company, the Standard Lumber Company, Wilson Cypress Company, Weaver-Loughbridge Lumber Company, Southern Saw Mills Company, Tallahassee Lumber Company, Hampton Lumber Company, Wilson, Otwell & Cone, Cummer Cypress Company, and possibly several others. I have prepared personally a map on which is shown the northern portion of Florida, with county divisions, the line of the Atlantic Coast Line Railroad therein, and its lines in Georgia.

(The map was marked for identification as "Intervenors' Exhibit No. 44, witness Crockett," and was received in evidence. Tes. p. 792.)

I have personally cruised timber in every county in Florida shown on such map, with the possible exception of Suwanee County. I have also made numerous individual and special investigations throughout the whole area. A commercial quantity of timber I would say would be any volume that could be properly operated under any method so that a return could be made to the operator. There would be no minimum amount of feet; any amount that could be handled at a profit. When I say there is no commercial timber, other than comparatively small and scattered areas left uncut, I mean by that statement to con-
[fol. 920] clude the possibility of utilizing any timber in a commercial sense as I have defined it then in that area,

except under special methods (Tes. p. 793). I will now indicate the area in which standing timber in commercial quantities exists. It will be noticed down near the lower left hand part of the map that an area has been marked out in dotted lines. I have put such marks on that map to indicate where such standing timber now is. It will be noticed that the line begins practically at the mouth of the Suwanee River on the Gulf of Mexico and extends northward into Lafayette County and thence again northward through the southern portion of Madison County, westward through the southern portion of Jefferson County into the southeast corner of Leon County, and then southward to the Gulf through Wakulla. It is in that area, and none other in the northern portion of Florida, that the standing timber in commercial quantities is to be found, with one exception; that exception has been marked on the map in circular form with dash lines, and is the tract known to all lumber men as the Epinger-Russell Company tract, which is southeastward of Lake City, Florida. I will speak of such tract later on and in more detail and in another connection. I know of my own personal knowledge the areas I have shown on such map are the only ones accessible to the Atlantic Coast Line Railroad in the northern portion of the State of Florida, where standing timber is now to be found in commercial quantities, as I [fol. 921] have defined that term. That is the situation. It will be noticed that outside of those areas I have shown the character of the country as consisting of farms and cut-over areas. All the timber in the large timber areas which I have shown with the dotted lines, is now owned by and is being cut by existing Florida lumber operators (Tes. p. 795). That is the situation; all of such timber in that large area is closely held by existing companies which have their own mills in Florida. They absolutely control all that situation in there. There has been a flock of little mills that have been in that territory who cut out everything they can pick up, and everything that is left in there will either be operated by the existing companies or left per se. If any person in or from the State of Georgia should undertake to acquire timber in Florida accessible to the Atlantic Coast Line Railroad, in the areas I have shown, it will be necessary to purchase it from one or the

other of the existing Florida lumber companies. The possibility of any person purchasing any of such standing timber now being cut by the Florida mills without purchasing the mill and logging equipment along with the timber is impossible to imagine. The output in volume of a mill, the type of mill and the logging equipment are controlled by the volume of standing timber, the species of same, the physical conditions in the woods as to logging. If an operator in Florida were to sell his timber, unless he had another supply of timber suitable for operation of the mill, he would be forced to junk his mill. Therefore I say it is beyond the bounds of reason to suppose the possi- [fol. 922] bility that a Florida operator would sell his timber without selling his mill. Of course, that does not exclude the possibility of selling at prohibitive prices, but such a thing would never occur. No saw mill operator considers am ain line haul on his logs to a point at a distance from his timber unless there are special and compensating circumstances. Having purchased both the Florida timber lands and the mill along with it, it is inconceivable that any situation could ever arise to cause a person to abandon the existing mill he has already bought, and construct a new one either in Georgia or any place else. Examining the map which I have introduced, it will be noticed that so far as concerns this timber area in Florida penetrated by the Atlantic Coast Line Railroad, there would have to be a considerable length of main line haul to reach any possible place of manufacture in the State of Georgia. Unless there were very considerable compensating and offsetting advantages in the form of a much lower transportation cost on outbound finished products, no person having the slightest qualification as a lumber manufacturer would consider for a moment locating or using a mill in Georgia or at any other point except in his timber; there would be absolutely no reason whatsoever in the ordinary case why such a manufacturer would undertake to pay a rail transportation cost on logs from the timber to his mill unless he had a very material freight rate advantage on the outbound [fol. 923] finished products (Tes. p. 798). The approximate proportion between the weight of logs and the weight of the finished lumber is three and one-half to one. There-

fore, it would require an outbound rate advantage of three and one-half cents per hundred pounds on lumber to offset the payment of one cent per hundred pounds rail costs on logs. A rail cost on logs equivalent to three cents per hundred pounds could not be offset at less than practically ten cents per hundred pounds on lumber shipped outbound. Therefore, it is very obvious that only under very special conditions would any practical mill man give any consideration whatsoever to the shipment of logs by main line. In addition to the transportation item which I have just described, there are other material factors which control nearly as much; the usual locations of the mills right in the timber itself; any mill at a distance from the timber, operating over a main line, unless they receive special service, like solid trainload shipments, are at a great economic disadvantage by being at times out of logs, compelling larger labor and equipment costs of sufficient amount to make it practically prohibitive and certainly very undesirable. As to what would be the most controlling circumstance which might cause a practical mill man to locate his mill some considerable distance away from his timber supply and to depend upon main line transportation of his logs, practically the most controlling reason which at any time would ordinarily make such a method of doing business possible would be location at tidewater; [fol. 924] and, of course, even under such circumstances an attractive rate on logs into the mill would be an influencing factor (Tes. p. 799). The Epinger & Russell tract which has been thoroughly covered before, is indicated on the map in Columbia, Baker and Union counties, marked by the initials E. R. tract. If such a thing were possible or had been possible as the acquisition of that tract by anybody in Georgia, at Valdosta, and it were possible to think of rail shipment of logs from such tract to Valdosta, the railroad movement would be over the Southern Railway, which splits the tract open and has a direct shoot into Valdosta, Georgia, at a distance of about seventy miles; whereas the circuitous route over the Coast Line would be about one hundred and seventy. I don't think any thinking operator or experienced operator would think of building a mill except at the timber. There would not have been any circumstance that could have prompted

an intelligent man to have paid a higher transportation cost on his logs by shipping a long haul over the Coast Line than if he had shipped via the shorter route over the Southern Railway from the same origin to the same destination; he would take the shorter haul because it would take the same equipment. As to whether it is to be understood from all that I have said that there are no trees elsewhere in the northern portion of Florida than in the two timbered areas which I have marked out on my map, there are, of course, scattered about through the territory some small patches of timber, owned perhaps by farmers and [fol. 925] in most cases reserved for personal use or to beautify the home grounds, but not in commercial qualities. There are certain methods of using that sort of timber and to some extent, in cases where it is not too far away from transportation, it is used; but practically without exception, the only means of cutting would be to work it up with portable mill and haul the timber. It would be out of the question to construct tram roads and attempt to haul logs to a main line and pay a main line charge to any mill. The costs would be prohibitive, and, in any event, impractical from an operating standpoint; in fact, even these small tracts have already been picked up and logged out.

The situation simply is that most of the south Georgia timber has been cut out. Those gentlemen cannot turn to Florida for sources of supply, unless they were to attempt to buy out completely some of the timber in Florida, which is already syndicated, along with the existing Florida mills and the equipment. There is no possibility of a commercial movement of logs from the area shown by the map to any south Georgia port. This answer, relating as it does to south Georgia operators, can also very nicely apply to Florida operators. The testimony which I am here giving is predicated upon my intimate personal knowledge of the territory, and the economic facts pertaining to the industry, as well as my long experience and special qualification as a timber expert and advisor to saw mill operators in just such situations (Tes. p. 802).

[fol. 926] I can only give an approximation of the amount of uncut timber in the territory covered by the map. That could be ascertained only by getting the figures from the

people who own the timber and the early operators; but I would say it might be in the neighborhood of two and a half or three billion feet. In the upper right hand corner of my exhibit I have shown "ownership of timber" in certain corporations. That is entirely conclusive. There is nothing else, except what is owned by these people, that can be considered. The other timber that is owned by other parties is not in commercial quantities; and a number of concerns have operated in there, cut their timber out, sold their equipment to the Taylor Lumber Company at Springdale, and are out and gone completely away; and that applies to several others in that given area. The map includes the Coast Line only. The black line in there is the Coast Line (Tes. p. 803).

Cross-examination.

(By Mr. Perry:)

I am familiar to a large degree with the available timber in Georgia as shown on the map. I have cruised timber in south Georgia counties there adjoining there shown on this map. I believe in about six of these counties; I am perhaps not familiar with one or two farther west counties, Thomas, for instance, to a certain degree. I don't believe I answered that there was comparatively no available timber for commercial purposes in south Georgia. I stated that there was, with few exceptions—there were a few ex-
[fol. 927] ceptions in south Georgia. There are one or two comparatively large tracts in south Georgia, but for the most part the country is cut out. There is about two and a half billion feet of timber uncut inside of the dotted line on the map with the operators enumerated; and that is an approximation. That is on the section or the part of the map shown inside of the line; and my figures are an approximation; I would have to verify them. That is all owned by mill people. If timber is pretty well exhausted in Georgia, the mill interests in that section have got to do one of two things, either to get their logs from other territory, or dismantle or close down their mills. If they wish to continue operating I would advise them to go to the Pacific Coast. I wouldn't advise them to come to Florida. The particular advantage in going to the Pacific Coast is because of an adequate supply of timber for a good many years to come.

I live in Jacksonville, and do this kind of work for the public generally. I spoke a while ago of the absurdity of shipping this 190 million feet of timber in the Epinger-Russell tract over any line other than the Southern, as it goes right through there. As to whether, if the rate is much lower over the Coast Line I would still ship over the Southern, I don't admit that you would ship logs to a far away point over either road, regardless of the rate (Tes. p. 805).

"Q. You said if a person wanted to use that timber, get those logs, for manufacture at Valdosta, he should ship [fol. 928] them over the Southern Railway, assuming that the operator would want to make a profit on his operation."

"A. Well, then, he wouldn't ship the logs at all."

By Mr. Perry:

"Q. The question is, if that rate were much less over the Coast Line, wouldn't you move them over the Coast Line instead of the Southern?"

The Witness: "As a supposititious case, yes, sir."

"Q. Not as a supposititious case——"

"A. Well, it is a supposititious case."

The reason why a man in Valdosta could not move logs from this Epinger-Russell tract into Valdosta, a distance of 168 miles, is because he wouldn't have the advantage of tidewater. I mean that the manufactured lumber at tidewater is worth more than it is at interior points.

"Q. Now, then, only thirty-five per cent moves by water; why wouldn't he be on equal footing with the other sixty-five per cent that moves by rail?"

"A. Well, he would be at an advantage on part of his stuff"——

"Q. This 65 per cent—twice as much?"

"A. No; there would be other offsetting disadvantages—the cost of moving the logs, which would have to be added to his cost."

As to whether or not I agree with the testimony of Mr. Fleishel that tidewater location is not so much a consideration and that he is going to move his mill into the interior territory, I think the tidewater advantage is not anywhere near what it has been; some of the advantages of tidewater

have been removed, by a reduction in the rates or an equalization with water-competitive rates, as compared with the rail haul. As to the testimony of either Mr. Foley or Mr. Scherer, to the effect that there was a substantial amount [fol. 929] of available uncut timber in south Georgia, I do not disagree with them entirely. There is some standing timber in south Georgia; for the most part it is cut-over stuff, which is about all that is available in any of the territory now; and there are a few tracts there that might be acquired. I would say there is no very substantial amount of uncut timber in south Georgia; the desirable timber for the most part in south Georgia has been cut out for a great many years and a great many mills have been cut out and discontinued operations (Tes. p. 808).

Redirect examination.

(By Mr. Cotterill:)

I would say that there is considerably more available uncut timber in south Georgia than there is in Florida. I take into consideration the tracts in south Georgia referred to by Mr. Foley and possibly one or two others that I might know of of my own knowledge. I am familiar to a certain degree with the tracts Mr. Foley described, the Dunlevie Lumber Company. I have cruised timber for the Dunlevie Lumber Company; I have worked up a map for them. As to whether these tracts are for sale, this company went into the hands of a receiver and some of the timber that they blocked up has been sold to other parties, in some cases for turpentine. Dunlevie's timber was low grade stuff for the most part—cut over areas and second growth—which I presume accounts for their ceasing operations. There is more standing timber in south Georgia than there is in north Florida, except the areas indicated on the map as being [fol. 930] timbered areas. I am not including in my statement any of the timber owned by the parties shown on this map. I am not including the Epinger & Russell tract and the other syndicated holdings (Tes. p. 809).

[fol. 931] W. E. McCain was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

My name is W. E. McCain, Madison, Florida; timber cruiser for Brooks-Scanlon Corporation. I have been engaged in such work for twenty-five years, twenty years with this company and its affiliated concerns. My particular duty has been estimating and buying timber, and looking after their holdings in the State of Florida and State of Louisiana. I believe such work has made it necessary for me to familiarize myself with the conditions as to standing timber in the State of Florida, because that is what I have been doing for many years. The situation is just as Mr. Crockett has testified, except for the two areas which he has shown on his map, there is no available Coast Line timber in northern Florida in commercial quantities; there are scattered small pieces owned by settlers or farmers, which we speak of as odds and ends that he may have after his clearing has come in on his land he might own, there may be a rim or one corner that lay over next to our holdings and which we consider logically our timber which we can buy or handle; but if we fail to buy it, it is impossible for any one else to buy it and take it out because they would have to come through our holdings to get to it, and make his haul too long. If our company fails to buy these particular tracts, within our holdings, and if our tracks are taken up, then such tracts are left high and dry. There are very few [fol. 932] odds and ends in the cut-over sections. The only possible way anybody could use them would be to put in a small portable mill. Some are using Fordsons and other tractors, and probably cut for local consumption. In a commercial sense, such odds and ends would not be thought of as sources of supply for regularly established saw mills at fixed locations. It would not be possible for a mill located on the Atlantic Coast Line Railroad in Georgia to operate by depending upon such a source of supply as those odds and ends in Florida which I refer to, because the cost of moving the logs to a main line, plus the costs of a main line haul to a mill location, would be prohibitive, regardless of

the freight rates (Tes. pp. 811-812). I am basing my testimony upon intimate personal acquaintanceship with conditions all over the Atlantic Coast Line Railroad in the northern half of the State of Florida. I have actually been over these lands many times. I have literally combed this country with a fine-toothed comb, looking for just such timber; in fact, Mr. Crockett and I very recently made a personal survey of the larger part of this area to verify our previous knowledge of this condition.

"Q. Mr. McCain, you seem to have operated in this particular country for a number of years, where there were formerly tracts of commercial timber, large and small, in the northern half of Florida, other than which are now owned by the Florida operate-s in years gone by——"

"A. Yes, sir."

"Q. —ten or twenty years ago——"

"A. Yes, sir."

[fol. 933] "Q. In that area has the same thing happened which must happen in Georgia, namely, are they just cut out?"

"A. Well, they are cut out from time to time."

"Q. What has happened to the Florida mills?"

"A. That cut out this timber?"

"Q. Yes, sir."

"A. They are gone."

"Q. Closed up entirely or moved to another location?"

"A. I have got a list of thirty that has closed up and moved."

"Q. In what period of time?"

"A. The last six years."

[fol. 934] That is the common experience in the saw mill industry in any area; when you get out of timber you have got to move. I understand there was a Mr. Jackson run a *mule* on that branch south of Tallahassee somewhere there; I know where the timber was cut (Tes. p. 813). They were cut out of there and gone before my time in there. They were both large and small concerns, from 10,000 capacity to a hundred thousand daily, which have cut out and gone. I think we bought the last available tract of commercial timber in north Florida for cutting about four years ago. We bought that Irwin-O'Brien tract. That is the only one that

I know of that is worth anything (Tes. p. 814). In the period of five years preceding that time, which goes back to nine years, generally speaking, all the then available tracts of commercial timber in north Florida were being cut. Four years ago that country was full of little mills (Tes. pp. 814-815). There is a few running yet. There is in existence in Thomas County, Georgia, a fairly large and substantial quantity of timber suitable for commercial use. I did not estimate the quantity of it. I have been told it runs between three and four hundred million feet.

Cross-examination.

(By Mr. Perry:)

I don't know of any tract that has been for sale up there, referring to Florida, in the last four years; not in any quantity (Tes. p. 815). As to whether I would call "quantity," [fol. 935] one hundred million, or one hundred and fifty million feet, there ain't 100,000,000 feet of it in the whole north end of the State—there ain't a fourth of it, and hasn't been in the last four years. I just know of the recent sale of the Epinger-Russell tract up there. I had been on the tract. I knew that was for sale. I knew it had been sold recently. When I said none has been sold in the last four years I had in mind except that over there. I thought you had reference to right south of Thomasville. Well, within 170 miles of Valdosta will take that in. There is no other tract there, nowhere.

"Q. Now you say there is some that might be used for merchantable purposes except for the fact that you all have it bottled up, and for that reason you can't get into it. Are there a great many tracts like that?"

"A. I have got—pretty nearly got an estimate of every tract of timber that is left anywhere in that neighborhood where we can use."

They can use it by hauling it fifteen miles after they saw the lumber, to the railroad; there is none on the railroad. It is true that a man often, after he has got an established business, can use several small tracts when it wouldn't pay him to establish a location for one tract, where it is within a radius that he can cut it and haul it. As long as you can add to your main holdings you are better off. But you

couldn't well equip yourself for making lumber with a [fol. 936] small amount of timber. You can't haul logs on trucks over four or five miles; you have got to have a paved road even then. We have several places in our holdings where they have come in and bought these spur tracks and we bought the lumber at our holdings from them. There are small tracts here and there and bottled up, none close enough to the railroad that they could operate. All that lumber that is near the railroad that could be used by a lumber mill man has been bought and cut out.

"Q. But from your experience of a long number of years, both in south Georgia and Florida, and, forsooth, to draw logs on the Georgia and Florida line, by reason of the standing timber it is much better in south Georgia than it is in north Florida; is that your view?"

"A. Well, there is none in north Georgia—I mean north Florida, now."

"Q. I see; but, as between the two, there is a great deal more standing timber in south Georgia than in north Florida, according to your position; is that right?"

"A. In Thomas County there is some good timber."

"Q. I am talking about generally—in Lowndes County and in Ware County?"

"A. Well, all around White Springs, there is a tract up in there."

"Q. In Georgia, you mean?"

"A. In Georgia."

"Q. Well, now, as between the two, I want you to state, if you are in a position to from the opportunities that you have related here, whether or not Georgia has more available timber than north Florida?"

"A. It has" (Tes. pp. 819-820).

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M. J. Scanlon was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

[fol. 937] M. J. Scanlon; Minneapolis, Minnesota. I have been engaged practically all my life in the manufacture of

lumber and newsprint paper. I am an officer and director in some twenty corporations largely engaged in the manufacture of lumber and newsprint paper and the ownership of paper. We are engaged in the manufacture of lumber and newsprint paper in British Columbia, Canada, in Washington, Oregon, California, Florida, the Bahama Islands [fol. 938] and Cuba. As to the annual lumber production in all the various companies in which I am interested, I forget. We have two operations in California. Our an-ual production in the way of dealing with wood products last year was rather over seven hundred million feet. We have a potential capacity of rather near one billion feet. The reason we did not run to capacity last year was that the market was not at a profit (Tes. p. 821). I have been familiar with the economics of the lumber industry, in the Southeast particularly, and in north Florida and south Georgia for a number of years. *U* have been coming to Florida for a period of almost 30 years, investigating the timber supply, and the possibility of manufacturing it and selling it at a profit. I am the Mr. Scanlon who is in the Brooks Scanlon Corporation.

I am personally acquainted with the chairman of the board of the Atlantic Coast Line Railroad, Honorable Henry Walters. I have been intimately acquainted with him in a business way for a number of years; I wouldn't say intimately, but we have had correspondence, and I have met him on several occasions, and my last visit, the last conference I had with him, was on December 8, 1926. The object and purpose of the conference with Mr. Walters was that we have huge investments in Florida which would be largely destroyed if the present so-called Cummer rate is advanced; and I have been told by these lumber men who are also interested, and I think the former examiner in this case at Valdosta, Georgia, indicated, that the Coast Line Railroad were the plaintiffs in this case. I did not attend [fol. 939] the conference here on July 24th with Mr. Delano and his associates and these lumber men who are interested in this case; I was in Habana, Cuba, at that time, and had fully intended to be here at that conference, but my train was late, and when I arrived here on that same day, the meeting had been adjourned. Now, we had been assured repeatedly by a very prominent official on the Atlantic

Coast Line Railroad that that rate was profitable and it would be justified and maintained. And when I heard these rumors about what took place at this Valdosta hearing, I became alarmed.

I had had the assurance of these gentlemen that the rate was a profitable one and it would be maintained. And, as a matter of justice to my stockholders, I wouldn't sit idly by and see this thing go on, with the possibility of an industry in this State being destroyed. So I made an appointment with Mr. Walters, and I saw him on the afternoon of December 8th at two o'clock, and I told Mr. Walters that I had come down there personally to see him because we had been assured by his officials that this rate was a profitable one. Mr. Walters agreed absolutely that the rate was a profitable one and that he had instructed his officials not only to justify the rate, but to maintain it. He himself had personal knowledge of the character of operations under that rate. He most certainly did. Mr. Walters himself sold us a block of this timber involved in this. Mr. Walters and his associates had the naming of this rate; he was instrumental in [fol. 940] getting us to locate at Eastport, Florida, and told us so. As to Mr. Walters having familiarity at the time of this location with the operating conditions which would make the rate profitable, I assume that a man in his position must know and does know that that is true.

It is a common experience for available sources of commercial timber to be cut out in given regions, that is the history of the business. What happens is that these small operators don't usually wait to get out; they fail before they get that far along. That has been the history of the industry (Tes. p. 824). When the cuting has been completed they move somewhere else where they can find an available supply of timber if they have got the money to go along with.

"Q. Except in tidewater locations in this section of the country, has it been your observation that other lumber men, when faced with the cutting out of their own timber, have then attempted to transport logs by railroad freight for long distances."

"A. I am very well acquainted with the lumber operations of the United States, and Canada, and, as a rule, that is not the general practice and it is very seldom engaged in."

"Q. Did you hear the testimony of the previous witness, Mr. McCain?"

"A. Yes, sir."

"Q. While perhaps not as familiar with the details or the names of the companies, has it been your observation that that is just what took place in the northern portion of Florida?"

"A. Yes, sir."

So far as I am advised, all the available commercial timber in the northern portion of Florida is gone. I assume these operating companies handle their own timber and it is not for sale unless their mills and their equipment go with it (Tes. pp. 825-826).

[fol. 941] An advance in the freight rate being paid on logs to my company in Florida would compel the dismantling of the mill. It undoubtedly would. In that event, it would be necessary for us to do one of two things; we would [fol. 942] have to abandon our investments largely at Eastport, Florida, and select a new location in the woods, or sell our timber land to some other timber operator. If we located in the woods there are several points where we could very readily locate. The point where we will actually locate will depend entirely upon this proposed route of the Seaboard Air Line from down Tampa way through Perry.

If there were, in fact, any competition between our company and such of the few remaining mills in south Georgia as there are, and if, as a result of this case, we were compelled to take the loss involved in dismantling our mill and setting it up on a new location in the timber—we would be more dangerous to them than we are now for the reason that we would not have to pay this transportation on logs that we do now. A lot has been said in this hearing about competition. The only competition from the Florida mills, or the Georgia mills, to speak of, is the competition we have largely within our own State, and is from mills that are located in the timber and don't have to pay these charges to tidewater.

"Q. Yes, sir. In that statement you are dealing with the type of material which you ship to the eastern markets?"

"A. That is a product by itself."

"Q. Yes, sir?"

"A. It is what is commonly known as merchantable timber and it is only produced from large timber and largely of the heart variety; and it is true that we have an advantage in the matter of freights on the present rate, on the lumber that we ship to what is known as the coastwise trade, which means the seaports along the Atlantic Coast."

[fol. 943] That advantage is by water transportation exclusively. That is, in substance, the only thing today which offsets our payment in to the mill of a freight rate on logs on the Cummer scale. And we would not do that if we had not the investment in our plant and equipment (Tes. p. 827-828). If this case should be decided adversely to me it is my position that the consequence would be to cause me a severe loss running into millions of dollars without the least particle of benefit to anybody in Georgia or anybody in Florida. In the event we were to be compelled to take such a loss and charge it off as it were, figuratively, and to go back into the timber, and there were the remotest competition between us and the Georgia mills, if they forced us to do that, we would be in a better position to compete with them than we are now. Once having absorbed our loss through the destruction of this property situated at Eastport, Florida, we are infinitely better off and we are far more dangerous as a competitor than we would be in this trade position.

Now, in regard to this question of freight rates; I don't regard this rate as particularly low, and I never have The fact of the matter is, one of my associated companies, the Ray Arnold Lumber Company, sold the standing timber on 107,000 acres of land down here in Boca County that was already tributary to our lands in east Florida. Nevertheless, we sold that timber, instead of attempting to haul the [fol. 944] logs to the Eastport mill and manufacturing them, rather than to pay the freight that it was necessary to pay to bring it to our mill. Where we had the opportunity to make disposition of that particular tract and to keep the remainder within the capacity of our present mills, we preferred to sell it rather than to ship it to our mill under the Cummer scale. And I would say that the man that bought it built a mill in the woods and was manufacturing it down

there although he could have shipped it to Tampa, although it was costing him more than it would have cost us to manufacture it. It was on the Atlantic Coast Line Railroad and subject to this rate on the Cummer scale.

Cross-examination.

(By Mr. Perry:)

Once I am there in the woods and once having absorbed the loss, I am infinitely better off. I hate to face that loss, though; that is going to give me a good many heart aches. There is invested in our plant here at Eastport rather more than two and a half million dollars—the things that go with it. Now, our loss is not going to be confined to what our investment at Eastport, Florida, is; we have property in New York, we have a transportation company that pulls that lumber to destination, and those facilities will also be a part of the wreck and the ruin. We might use that to some extent if we were in the interior cutting our lumber. We could not use it then just as well as now, because we have not got the facilities for doing business, we are out [fol. 945] here seventy or eighty miles in the interior manufacturing eight or nine million feet of lumber monthly; we don't know that we will get an adequate car supply to bring that to our plant facility at Eastport for loading on barges (Tes. p. 830). Mr. Foley stated that that loss would be over three million dollars. I am sure that estimate is conservative. Now, when I speak of a three million dollar loss, the loss that we suffer by our plant and the facilities out there is not all the loss we will suffer by any means, we must go on paying taxes on properties—still we are moving, yes, sir, and the loss of trade connections; it is impossible to put a price on a thing of that kind.

I first started in the lumber business in 1885 at Omaha, Nebraska. I was engaged at that time in the wholesale and retail lumber business. As a manufacturer I began in Minneapolis, Minnesota, in '89. I have been continuously manufacturing since that day down to the present time (Tes. p. 831). We had a number of plants. We had a plant at Minneapolis, Minnesota. We had a plant at Nickerson, Minnesota; a plant at Scanlon, Minnesota; a plant at Cass Lake, Minnesota; a plant at Duluth, Minnesota;

and we were producing three hundred million feet annually and buying there on the open market. We bought those plants right along one after the other. The maximum capacity of the plants was the plant at Scanlon, Minnesota, that held the world production of lumber record up to that time. That was one. We were producing at that time [fol. 946] 115,000,000 feet of lumber annually and we could have produced in excess of that amount. So far as these ground rattlers are concerned, in my forty odd years' Experience I have never bought one of them that was successful, Mr. Perry. When you think you have got a monopoly of saw mills in Florida that are out of timber, I am going to say to you that we have them in every State in the Union. They are quite necessary, yes, sir (Tes. p. 832).

As to what is timbered in north Florida and south Georgia, I must necessarily make a personal inspection of it. I put my money into it. I have made a trip over it. I visited that Perry operation on November 8th, 9th, and 10th, last; and a later visit was made on November 17th, 18th, and 19th. I visit that plant a number of times a year. I have made a personal inspection of the northern Florida, the Georgia-Florida territory, so to speak, along the border, on the Florida side (Tes. p. 833). I don't think there is any available timber up there for merchantable purposes that is not already owned by the mills in Florida. I have been watching these proceedings with considerable interest.

I made some reference to a tract of land in Polk or Lake Counties. I don't know how far that is from Jacksonville or Eastport by rail, but I think it is approximately 150 miles by motor, and I should think the railroad distance would not be any greater. I am not certain about it, and I never had occasion to look that up (Tes. p. 834). I am quite positive it is less than 170 miles.

I have received a letter from Mr. Walters dated January 7. I have the original letter with me. I will read the fifth paragraps (reading):

[fol. 947] "As stated at all times and in our testimony we desire to *we desire to* carry out the terms of our agreement of 1914 with Carpenter & O'Brien until the billion feet have been transported, but we cannot give testimony which would apply this 1914 rate to all logs moved by Atlantic Coast

Line Railroad intrastate and interstate over its whole system" (Tes. p. 835-836).

That is dated New York, January 7, 1927.

Redirect examination.

(By Mr. Cotterill:)

About all I have got to say, as I have already stated, I cannot imagine what this is all about. It is true that they have some mill men up there in Georgia that are out of timber who would like to locate somewhere else. Three of those gentlemen come down here and they make the statement or go on the stand and give testimony that they think there is some timber in north Florida. They don't have any idea as to the price they would have to pay, or what it would cost them to bring these logs to market.

Now, as I said before, Florida has no monopoly on the small mill man; he is all over the country; his domain is bounded by the Hudson Bay on the north, the Atlantic Ocean on the east, the Gulf of Mexico on the south, and the day of judgment on the west. They haven't even stated in this meeting that they would do anything if they were granted the rate.

[fol. 948] Now, why destroy industries on the Atlantic Coast Line Railroad that have spent millions of dollars in developing it—to give an opportunity to someone to try and do something? He has not even said yet he will do anything; he thinks he can do something. But surely—Now, in that connection, Mr. Fleishel made the statement yesterday that he has no objection whatever to the Atlantic Coast Line Railroad extending this intrastate rate into Georgia, and even went so far as to say that he would be perfectly willing that the Coast Line Railroad should deliver those logs at destination, regardless of distance, for a dollar a car. I will go him one better and say they can make free delivery if they want to, and Brooks Scanlon will never offer one single objection to them doing so!

We have down here at Eastport employees in that mill alone, some seven hundred and fifty people; and based on the usual calculation of four and one-half to five persons dependent on every man in the employ of an industrial

company, we have some thirty-five hundred people in Eastport. They are a happy lot. They are prosperous. They have work every working day in the year that they want to work, and they can't stay on our payrolls unless they do work. We have built homes for them—houses, churches, schools, community halls. And I am proud of that town down there! I think it is one of the best manufacturing small towns in the Southern States, or the Northern States. I don't want to see that destroyed. I don't want to see that [fol. 949] destroyed when there is nothing offered in exchange and somebody who is going to be benefited by changing these rates.

I can't imagine what it is all about!

Recross-examination.

(By Mr. Perry:)

I heard these Georgia manufacturers testify. They testified positively that there was lumber in Florida and they did desire to manufacture it in Florida and withdraw from Georgia if they had this rate. They knew nothing whatever about the quantity of it, or the quality of it, or the cost of it, or the location—or if they did know, they refused to divulge it (Tes. p. 839).

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E. C. Green was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cassidy:)

E. C. Green; Jacksonville, Florida; manager of the Jacksonville Traffic Bureau, a branch of the Jacksonville Chamber of Commerce, and also of the city of Jacksonville. All [fol. 950] of the intervenors in this case are members of our organization. I have prepared a short statement showing the outbound lumber rates from Jacksonville and from Groups One and Two in the State of Florida, and the rates from certain points in Georgia.

(Thereupon the exhibit was marked for identification as "Intervenors' Exhibit No. 45, witness Green.)

The exhibit shows the rates to the eastern markets, and the bulk of the shipments as shown move to those markets, as I understand it, and the purpose of this exhibit is simply to show *simply* that the rates from the Florida zones are slightly higher than those in effect from south Georgia territory.

(Thereupon exhibit No. 45 was received in evidence. Tes. pp. 840-841.)

Cross-examination.

(By Mr. Gwathmey:)

These are the rates prescribed by the Interstate Commerce Commission in what is known as the Augusta Pine Association case, in Docket 13449. The rates from Jacksonville are the same as those in effect from the south Georgia points shown to the same destinations, taking New York City for illustration (Tes. p. 841).

(Witness excused.)

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"Mr. Cotterill: In so far as our presentation in chief in behalf of the Intervenors is concerned, that is our evidence; I do not apprehend any further evidence to be submitted."

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[fol. 951] E. M. Price was thereupon called as a witness, and, having been duly sworn at the previous hearing, testified as follows:

Direct examination.

(By Mr. Perry:)

Mr. Examiner, at the Valdosta hearing I submitted several exhibits comparing the results of the intrastate and interstate rates at Valdosta, Bainbridge, Waycross, and other places; and I would like now to submit my Exhibit No. 46, which gives the same information as to Climax, Georgia.

(Complainant's Exhibit No. 46, witness Price, was marked for identification.)

My exhibit No. 47, which I now submit, compares the rates on logs intrastate in North Carolina operated by the Atlantic Coast Line Railroad and the proposed rate of witness Perrin in this proceeding.

(Complainant's Exhibit No. 47, witness Price, was marked for identification.)

Exhibit No. 48, which I now submit, shows intrastate rates on logs in North Carolina operated by the Atlantic Coast Line from point to point, as compared with the rates submitted or proposed by the witness Perrin in this proceeding.

(Exhibit No. 48, witness Price, was marked for identification.)

It will be noted on this exhibit that the rates now published between the North Carolina points are on a per-foot [fol. 952] basis, and this has been converted to a cents-per-hundred-pounds based upon an estimated weight of twelve thousand pounds per thousand feet (Tes. p. 843).

Exhibit No. 49, which I now submit, is a comparison of the intrastate rates in South Carolina with the proposed rates of witness Perrin.

(Complainant's Exhibit No. 49, witness Price, was marked for identification.)

The Witness: Exhibit No. 50, which I now submit, is a comparison of the rates being applied jointly on intrastate traffic in South Carolina between points on the Atlantic Coast Line Railroad and points on the Charleston & Western Carolina Railroad.

(Complainant's Exhibit No. 50, witness Price, was marked for identification.)

These rates it will also be noted are subject to a twenty per cent reduction when they are used in combination with other lines.

Exhibit No. 51, which I now submit, compares the rates intrastate in Georgia with the proposed rates of witness Perrin.

(Complainant's Exhibit No. 51, witness Price, was marked for identification.)

In connection with this exhibit I want to call your attention to witness Perrin's Exhibit No. 24 where he submitted the *sup*posed Georgia intrastate scale. It was predicated [fol. 953] upon a minimum of twenty-four thousand pounds, which is the scale applying in Georgia on logs, n. o. s. The scale which I am submitting in this exhibit is the scale which is universally used in hauling logs predicated upon a minimum of forty thousand pounds and is known as the Georgia intrastate scale.

Exhibit No. 52, which I now submit, is really a summary of the preceding exhibits, and shows under column "H" the average of the inter- and intra-state rates; under "I" the average intrastate rates, compared in "J" with the proposed rates of Mr. Perrin.

(Complainant's Exhibit 52, witness Price, was marked for identification.)

In connection with this exhibit and with column "I" and columns "G" and "H," I would like to call attention to the testimony of Mr. Perrin, to the effect that the preponderance of the log movement on his line was intrastate.

Exhibit No. 53, which I now submit, merely shows the financial operating results of the Atlantic Coast Line for the year 1914, and then for the years 1921 to 1925, inclusive, indicating, as shown on the exhibit, that the gross operating, that is per mile, of Atlantic Coast Line has increased during that period, or rather, 1925 over 1914, gross earnings 155.2 per cent, and the net earnings per mile have increased 159.8 per cent.

(Complainant's Exhibit No. 53, witness Price, was marked for identification.)

[fol. 954] The purpose of that exhibit, of course, is to show that there is no real financial necessity for increased rates. The purpose of all these exhibits, Mr. Examiner, is that you might have a complete picture of the log rate situation as to the Atlantic Coast Line Railroad, in view of the fact that at the Valdosta hearing the interstate rates were submitted but the intrastate rates were not.

The rates shown on Exhibit No. 51 are the rates proposed and as shown on witness Perrin's Exhibit No. 24. The rates in Georgia are the rates authorized by the Georgia Public Service Commission. A. C. L. Railway, I. C. C. B-2092. That is the Georgia intrastate tariff. Our authority for Exhibit No. 53 is "The Annual Report Filed with Georgia Public Service Commission." I did not compare the results shown by these annual reports with the results shown by the annual report filed with the Interstate Commerce Commission. The Atlantic Coast Line Railroad files with the Georgia Commission an annual statement showing the results of their system operations as well as their intrastate Georgia operations. I presume it is the same information as given to the I. C. C. It is so stated in the report and sworn to. In the last column of the exhibit, headed, "Net Operating Earnings," I mean the net operating revenue. It is shown in operating earnings per mile of road. It should be net operating revenue.

[fol. 955] Thereupon Complainant's Exhibits 46 to 53, inclusive, were received in evidence.)

Cross-examination.

(By Mr. Gwathmey:)

AII of the rates shown in this series of exhibits are the rates applicable via the Atlantic Coast Line Railroad. I have not undertaken in these exhibits to show rates that may be applicable over various lines of railroad, interstate or intrastate, because these lines are not involved in this proceeding (Tes. p. 847). No, sir, I am not familiar with the circumstances and conditions of a transportation character under which logs move in connection with the other rates of the Atlantic Coast Line Railroad than those shown except in a general way. I have no knowledge of any of the movements. I have exhibited the average intrastate and the average interstate log scales of the Atlantic Coast Line Railroad and the individual scales from which I draw my average.

"Q. The final conclusion of the Georgia Public Service Commission respecting the proper rate level on rates with-

in the State of Georgia has been suspended for the time being?

"A. If you have in mind the order that the Georgia Commission issued some months ago, that has been cancelled, there was no suspension to it; it was cancelled on September 28th, I think it was. It was rescinded (Tes. pp. 848-849). Our own conclusion has been suspended as the eventual rate on logs within Georgia."

[fol. 956] As to whether there is any circumstance or condition suggesting to my mind the propriety or reasonableness of establishing within the State of Georgia lower rates on logs than the averages of the Atlantic Coast Line scale shown in my exhibits, I couldn't answer that question without a thorough analysis. Now, you are speaking of establishing rates in Georgia for state-wide application over all lines. That question could not be answered yes or no on basis of this exhibit, because this only applies with Atlantic Coast Line Railroad, which is only one of fifty-eight railroads in Georgia. This Georgia scale applies all over—what we call Class A railroads in Georgia. I have not familiarized myself with the general rate level on logs charged by the Southern Railway that operates in Georgia at the present time, because I haven't made any minute investigation of all the other log rates in Georgia for two years. The Commission from time to time authorizes the cancellation of what is known as "paper rates," obsolete rates. It is possible that there may have been some cancellation along that line that has changed the conditions that existed two years ago; and I am frankly not in position to answer that question. I don't recall the facts as they existed two years ago (Tes. p. 850). I can't say whether the Cummer scale in Florida, in its amount and for the range of hauls involved, is lower, on the whole, than log rates prevailing in the Southeastern States. If [fol. 957] you want me to answer the question with qualifications I can answer it. The Cummer scale is the lowest scale that I have been able to locate. As to whether or not it is our petition to make the rates from Florida to Georgia the same as between points in Florida under the Cummer scale, our complaint, as far as the Interstate Commerce Commission is concerned, of course speaks for itself, and doesn't mention in its prayers the Cummer scale. As to

my testimony at Valdosta, it is that if the Cummer scale is a reasonable scale for application intrastate in Florida, then we insist that it is a reasonable scale for application interstate for Florida to Georgia. I am not independently advancing the contention that a rate level represented by the Cummer scale would be just and reasonable. I had no expectations about it, as to whether the Interstate Commerce Commission would uphold any contention that the Cummer scale would be a just and reasonable scale to apply Florida to Georgia. I had filed the complaint and had attempted to give the Interstate Commerce Commission the truth of the situation as it then stood, and naturally have to leave it with the Interstate Commerce Commission as to just how the complaint should be satisfied. I did not say that I did not anticipate that such a rate level would be just and reasonable. We will presume that the scale in Florida was four times as high as the interstate scale from Florida to Georgia. You are asking me if in my opinion the Cummer scale would be a reasonable scale. I can't answer that. There would have been no complaint, [fol. 958] of course. The Georgia Commission is not advocating, in its true sense, any particular scale to be used in satisfying or in removing this alleged discrimination. We do say, and insist, that if the present intrastate rates in Florida are found by the Interstate Commerce Commission to be reasonable rates for intrastate application in Florida, that that scale be used interstate from Florida to Georgia. As to whether, if it were found by the Interstate Commerce Commission that there is unjust discrimination of a hurtful practical character which ought to be removed regardless of consequences, our complant would be satisfied by an increase in the rates between points in Florida, at least up to the approximate level of the so-called Alabama scale, I am not prepared to say just what is going to satisfy the complaint of the Georgia Commission. We would have to abide by the final decision of the Interstate Commerce Commission. Just what the measure of that rate should be the Georgia Commission is not saying, or attempting to say, to the Interstate Commerce Commission. I am in the attitude of not making any contention at all as to what should be a proper, just and reasonable rate level on logs from Florida to Georgia, but am simply leaving that ques-

tion to the Interstate Commerce Commission in the light of all the evidence, except to the extent that we still contend that if the Florida scale is found a just and reasonable scale, it should be used between Florida and Georgia. Whether it is a just and reasonable scale I am not prepared to say. I haven't investigated the reasonableness of the Florida scale. I would not attempt to answer the question without a thorough investigation. Our Commis- [fol. 959] sion has filed this complaint of alleged discrimination; and the point involved is the rates interstate from Florida to Georgia, as compared with the intrastate rates. In my testimony at Valdosta, I stated that if the Commission found the Florida intrastate rates just and reasonable, then we insist that those rates should be used to remove this alleged discrimination from Florida to Georgia. We are advocating the application of no particular scale beyond that point, that if this Florida scale is reasonable—and that is explained in my direct testimony at Valdosta—that has been in effect for a number of years in Florida—now if, in the opinion of the Interstate Commerce Commission that scale is just and reasonable, and it is justified for intrastate application in Florida, then we insist that that same scale be extended into Georgia. We are not advocating any particular scale of rates; we are leaving that to the Interstate Commerce Commission. Now, what would be the action of the Georgia Public Service Commission as an outgrowth of the final decision of the Interstate Commerce Commission in this case, I can't say.

"Q. Now, I am not speaking as to its attitude after the decision; but I am trying to interpret what it is you are here contending for with respect to the measure of that interstate rate, assuming the Interstate Commerce Commission were to find that you had not made a Section 3 or 13 case; are you advocating any reduction in the interstate rate from Florida to Georgia, even if the Interstate Commerce Commission should not find circumstances justifying it changing the Florida rate?"

"A. Well, we are advocating this course; that the interstate rate from Florida to Georgia should be no higher than the intrastate rate in Florida."

[fol. 960] "Q. Granting that, ans assume that you have lost on that point, or that you may—I am only asking for

that assumption, trying to exclude that element in your case—assuming that the Commission should find that there is no hurtful discrimination under Sections 3 and 13 of the complaint, and that on that account it may not disturb the rate in Florida, do you independently ask for a reduction of the interstate rate?"

"A. I haven't given that any consideration. I am not prepared to answer that. That, frankly, is a matter that would have to be determined by our Commission. I would have to be governed by their instructions."

"Q. And that, so far as you know, has never yet been determined?"

"A. As to the effect of what the Commission would do, the Georgia Commission would do——"

"Q. Or what it does now?"

"A. Or what it does now?"

"Q. What is its position now?"

"A. Anticipating that our complaint would be dismissed?"

"Q. In that contingency, yes, sir, as to the discrimination feature?"

"A. We are not giving that any thought in this case."

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[fol. 961] Jacksonville, Florida, January 21, 1927—
9:30 A. M.

Met pursuant to adjournment.

J. L. WHITE was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

(By Mr. Davis:)

I have examined the exhibits filed a few days ago in this hearing by Mr. Pettijohn, dealing with the cost figures that I have introduced in my exhibit at Valdosta. On the second page of Exhibit 39 filed by Mr. Pettijohn there are certain decreases in the amounts which I used, and he deducts $111.37 from that figure of $7196.42. Mr. Pettijohn bases

his deduction on two grounds. One of them is that some of this delay is due to the fact that these logs trains per- [fol. 962] form switching service at certain stations for other traffic. The other is that only fifty per cent of the overtime paid for on account of meeting of other trains could be properly assigned to log trains, the other fifty per cent being properly chargeable to the train for which it was delayed. Mr. Pettijohn states that his assignment is arbitrarily made.

As to the first of his reasons, my Exhibit 25, revised, first referred to, takes this into account by deducting 3.8 per cent from the entire expenses on account of other traffic hauled. This is carefully based upon the actual relation of the other traffic car-miles to the total log car-miles. I am quite sure that this is very fair. Further, an investigation of the performance of these trains for September, 1926, the month under discussion, shows that there were only four crews to which local freight wages were paid, and that such wages were paid because of switching for more than one hour in the handling of these log cars at Carbur. This charge could not possibly be assigned to any other service except that incident to the transportation of the logs, and is, therefore, properly shown in my statement. My statement, Exhibit 25, Revised, as to this, is thus fairer to the shipper than the facts justify, because I have made a deduction of 3.8 per cent on account of other traffic, whereas the facts show that these local freight basis payments were made solely on account of transportation of logs.

As to his second deduction, it is quite manifest that if [fol. 963] any deduction is to be made because of the delays brought about by other trains, we would be under the necessity of taking into account the penalty wages accruing to the crews of those trains. That has not been done by Mr. Pettijohn, and, therefore, my method is correct, and is certainly not based upon any arbitrary assumption.

Furthermore, penalty wages accrue from delays which are not caused by other trains, such as a broken rail or any obstruction to the track. Then, of course, there could be no apportionment of these penalty claims. My computations are based upon actual performance, while Mr. Pettijohn's are necessarily based upon theoretical conceptions, in which

he states that he has arbitrarily assumed that fifty per cent of the penalty wages was fair.

Mr. Pettijohn, in dealing with Item "B" of Exhibit 25, Revised, which is "Cost of yard hauling, $1,429," has deducted $594.70 from my figures. Of this amount $476.41 has been made by him by reducing the time of the switch crew in handling loads from Milldale to Eastport, and empties from Eastport to Kings Crossing, from six to four hours per day. Mr. Pettijohn's assumption is based on a partial observation of one day's operation; my estimade is based on the statement of our superintendent of terminals, Mr. T. W. Hansell, which was further supported by the testimony of yard conductor Keene. I do not think that this needs any further comment.

He then strikes out of my account $12.06, the item of interest, on the theory that this does not belong to any cost [fol. 964] accounting analysis, but that it should be provided for through profit. I did not, in my statement of cost, attempt to deal with interest charges from a theoretical cost accounting standpoint. Interest is a charge against the treasury of the company and must be paid in some way, whether through profit-and-loss or through some other account. If Mr. Pettijohn wishes to eliminate interest from the operating cost, he should then deduct it from the profit, thereby making it as long as it is broad. This also applies to the elimination of interest under Items "C" and "G."

Mr. Pettijohn deducts from my statement under this item $106.23, reducing by that amount my allowance for cost of locomotive repairs. My figures are based upon the cost of locomotive repairs on the Third Division, which includes this line and all of which is located in the State of Florida, for the most recent month available at the time of making the calculation. Those figures are, in my opinion, much more nearly accurate than are the figures taken for the entire system. The experience of the Atlantic Coast Line is that engine costs on its third division are about thirty per cent higher than similar costs on the other divisions. As to Items "A" and "B" of my original statement, which we have now gone over, I am of the opinion that my original statement as shown in my Exhibit 25, Revised, as to these items is correct. Mr. Pettijohn, in dealing with Item "G" which is "Cost of interest and depreciation; locomotives

$572," of my Exhibit No. 25, Revised, has deducted $387.46. [fol. 965] He has divided this deduction into three items; one of them is the elimination of interest, $381.35; the second is the adjustment of depreciation to thirty days instead of one-twelfth of a year, $2.61; and the third is applying train-mile percentage instead of car-mile percentages, $3.50. What I have heretofore said under Item "B" as to interest, applies to this $381.35. The interest accrues and must be paid. As to the item of $2.61 for depreciation, that is very small and it is based upon calculating depreciation on thirty days instead of one-twelfth of a year. Over the year there can be no wrong to the shipper in calculating depreciation upon a monthly basis. Furthermore, if there were any theoretical wrong in the month of September, 1926, it is overbalanced by the fact that there was an extra trip of this train in that month.

I think Mr. Pettijohn, in undertaking to apply train mileage rather than car mileage as the basis for assigning locomotive repairs to this service, overlooks the fact that this is a special service to which certain engines are segregated or allocated. As a matter of fact, five engines are assigned to this service and are constantly used in it. The wear and tear on an engine is necessarily proportionate to the strain to which it is subjected. In dealing with an average engine or with the average of engines in miscellaneous service over the entire system, train mileage may be as accurate as car mileage, but when a locomotive or a number of locomotives are assigned to a particular service, which confessedly puts [fol. 966] each of them to a constant strain, approaching its maximum capacity, it is very much fairer to attribute the repairs on those engines to the assigned service, and that service is measured by the car mileage made by those engines; and the method used by me, to-wit, car mileage method, is as to this particular service more nearly accurate than is the method suggested by Mr. Pettijohn. This service and the Putnam log service, which runs on the same route, have five locomotives assigned to it.

Mr. Pettijohn in dealing with Item "E" of Exhibit No. 25, Revised, which is "Cost of Maintenance, Locomotives, $3,423," made a deduction of $801.10. And this is made up of two items, decrease in repair cost per mile $751.30, and applying train instead of car mileage percentage,

$49.80. The first of these items, to-wit, $751.30, is disposed of by my discussion under Item "B" in reference to the deduction which Mr. Pettijohn there undertakes to make of $106.23. The next item as to applying train instead of car mileage percentages is disposed of in the discussion of the third item of $3.50 under "C".

Mr. Pettijohn, in referring to the second Item "C" of Exhibit No. 25, Revised, which is "Cost of interest and depreciation of cars, $624," deducted $419.28. This is made up of two items, elimination of interest $416.50, and of adjusting depreciation to thirty days instead of one-twelfth of a year, $2.78. In my discussion of the $12.06 amount un- [fol. 967] der Item "B", and of the $381.35 amount under Item "G", I have discussed the principles applicable to this matter, and for the reason there stated I feel quite sure that the deduction undertaken to be made by Mr. Pettijohn should not be allowed.

Mr. Pettijohn aggregates his decreases in the sum of $2,242.18. I have dealt with each item composing this aggregate and I am very sure that none of it should be allowed.

Cross-examination.

(By Mr. Pettijohn:)

As to whether interest on investment is paid for by the treasurer as interest, I don't know whether the treasurer, Mr. John T. Reid, had to pay it or not, but somebody had to pay it. I can't tell you whether interest on investment is paid for by the Atlantic Coast Line as interest by any one connected with the Atlantic Coast Line. I don't assume to understand the word "accrues" from an accounting standpoint, Mr. Pettijohn. I know that certain equipment is covered by equipment trusts, and those trust certificates bear interest and that interest has to be paid. That is a part of the interest that I was computing on here. I can't tell you whether there is any locomotive on the third division covered by equipment trust obligations. I have included interest on locomotives and cars but not necessarily interest on equipment obligations. I simply mentioned that as an example of one way that interest accrued.

"Q. Does the Atlantic Coast Line any place in its operating expenses, its income accounts, or its profit-and-loss accounts, or in its general balance sheet, reflect any item of interest on investment?"

"A. You will have to ask some of our accounting people that question, Mr. Pettijohn."

"Q. Then, as far as you know, the item which you have [fol. 968] included here as interest on investment does not appear on any of the accounts recorded by the Atlantic Coast Line or exhibited in their annual reports."

"A. I can't tell you that of my own knowledge."

The locomotive repairs on the third division for September were 30 per cent higher per locomotive mile, than the balance of the system measured by the cost per locomotive mile. I can't tell you offhand whether the average locomotive miles made by our locomotives on the third division average as high as our locomotive mile performance on other divisions. The mileage runs in the State of Florida are less than they are for the system. In some cases the individual engine mile performance would be considerably less. I judge that the locomotive miles made in the log service are greater than the mileages made for the system per locomotive day (Tes. p. 872). I don't know it; I haven't checked it up. The class of locomotives operating in the State of Florida are generally rather smaller than the type of locomotives generally operated on the system. I don't think that the locomotives of the Atlantic Coast Line wind up their life practically in service in the State of Florida. I don't know as any have lived out their usefulness yet. As to whether our oldest equipment, in so far as locomotives are concerned, is in Florida, assigned to Florida operations, I would not like to put it that way. I would rather put it our smaller power, because we handle a great many local freights and pick-up service in Florida, which requires a [fol. 969] smaller character than we use on the first and second divisions. At the same time we have some of our older cars used on a branch line and first and second division, in fact I expect the oldest we have are in that service. Our engines of smaller capacity in power are our older class of engines. The engines that are used in this log train service are a little larger than the average engines that are used on

the Third Division, as far as power is concerned. I would not say they are higher powered and better engines than are used in the freight service in Florida generally; no, I claim that the 800 class engine which is used in this service is loaded to its capacity by handling forty-four cars of logs. I forget offhand the capacity of that engine in tractive power. I would have to get my tonnage statement to tell you that. The capacity of the engine used is because of the grades and the tonnage of the train combined. In my duties I do not in the slightest degree deal with locomotive repairs. They do not come under my supervision in any way. I would know what the effect of any one month's repairs may add, as compared to the average for the year only by studying the various reports of the mechanical department. I don't know as I can answer what increases or decreases the average monthly repairs to locomotives on a railroad system. I don't know during what period of the year the repairs are highest. It might be so, that during the period of heavy locomotive miles, when locomotives cannot be spared in the shop and the repairs are not made that [fol. 970] the heavy cast per mile naturally increases. I couldn't tell you I don't know. I shop some of the heavy locomotives during the heavy period of transportation. I try to keep our shop going at all times. In fact, I know we do. We do the shopping during both periods of heavy movement and the light movement. We do most of it during the light period of movement, of course (Tes. p. 876).

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J. W. PERRIN was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

I was present at the conference held on Mr. Delano's business car in Jacksonville on July 24, 1926. There were also present Mr. Lyman Delano, Executive Vice-President, Mr. C. McD. Davis, Freight Traffic Manager—the latter being present in the hearing room today, as he has been throughout the hearing, and was also present throughout

the Valdosta hearing for the Atlantic Coast Line Railroad Company; Mr. W. E. Cummer and Mr. D. G. Coit for Cummer Lumber Company, Milldale and Lacoochee; Mr. J. Wade Tucker for the Everglades Cypress Company, Loughman; Mr. M. L. Fleishel, Mr. A. J. Marsh and Mr. W. J. O'Brien for Putnam Lumber Company, Eastport; Mr. J. S. Foley for Brooks Scanlon Corporation, Milldale; Mr. Herbert Wilson for Wilson Cypress Company, Palatka; Mr. Fred Rheimers for Deckman Lumber Company and Natalbany Lumber Company, which operate in Mississippi Valley [fol. 971] territory. I have prepared a memorandum for my files of what happened at that conference. Mr. Delano also prepared one on the train leaving Jacksonville southbound the morning of the conference; Mr. C. McD. Davis was on the train with him and assisted in its preparation; Mr. Davis having also participated in the discussion at Jacksonville. My memorandum was prepared immediately upon my getting back to Wilmington on the 25th of July, 1926. I have a clear recollection, even independent of that memorandum, of what happened at that meeting. In fact, in answer to your last question I begin this way: I remember the conference very distinctly. Mr. Fleishel acted as spokesman for the Florida saw mill men. He stated that the saw mill men realized that by usual rate comparisons the intrastate log rates of the Atlantic Coast Line Railroad are extremely low, and that the Atlantic Coast [fol. 972] Line, as the result of criticism from the Florida Railroad Commission, had had a possible opportunity to advance those rates, and not done so, and that the saw mill men were fearful that as a result of the pending complaint the Interstate Commerce Commission might render a decision ordering an advance in the Florida intrastate log rates. Mr. Fleishel further stated that, based in a measure upon the expectation of a continuation of these rates, large investments had been made in saw mills in Florida, and that any substantial increase in the Florida intrastate log rates would be disastrous to the industry. He stated that there had been a large amount invested in saw mills in Florida which now obtained the benefit of those rates, stating the amount of that investment at approximately ten million dollars.

Mr. Fleishel asked Mr. Delano his opinion as to whether the complaint could be withdrawn and what would be the A. C. L.'s attitude towards an effort in this direction on the part of the Florida saw mill interests, and in the event it should not be withdrawn what would be the A. C. L.'s attitude when the complaint was heard. Mr. Delano and Mr. Davis both stated that the Atlantic Coast Line had had nothing to do with the bringing of the pending complaint by the Georgia Public Service Commission, and for that reason could not object to its withdrawal should the saw mill interests succeed in having the Georgia Commission take such action.

Mr. Delano then went into some detail as to the history of [fol 973] these rates, his statement, participated in part by Mr. Davis, in substance being as follows:

The Atlantic Coast Line, in the purchase of the Jacksonville & Southwestern Railroad, found in effect a contract which had been entered into between that railroad and the Cummer Lumber Company, the builders and former owners of that road. Under this agreement, very low rates were being applied on logs to Milldale from points east of the Suwanee River, when the logs moved in train load lots, thirty cars minimum, the rate for the maximum distance having been in 1903 ten dollars per car of fifty thousand pounds. Mr. Delano emphasized the fact that under this Cummer contract logs were to move in train load lots. Under the terms of the purchase of the Jacksonville & Southwestern Railroad, the Atlantic Coast Line assumed that railroad's obligation under that contract. That contract expired by its own terms in 1918.

I desire to digress here to say that the contract with Cummer Lumber Company was lived up to to the time of its expiration and that I do not understand that Mr. A. G. Cummer's purpose in filing the contract, his Exhibit 27, was to indicate that he considers that the contract is in any way binding since its expiration in 1918 (Tes. p. 881).

Mr. Delano further stated that in 1914 the Carpenter-O'Brien Company entered into negotiations with the A. C. L. for movement of logs from Lafayette and Taylor Counties to the vicinity of Jacksonville, and as a result of these negotiations a rate and service contract between the Car-
[fol. 974] penter-O'Brien Company and the A. C. L. Rail-

road was made for train load movements at the rate of twelve dollars per car of fifty thousand pounds from points between Clara and Perry. Mr. Delano stated that the Coast Line recognized the Brooks Scanlon Corporation as the successor to the Carpenter-O'Brien Company in this contract. It was explained that the Atlantic Coast Line issued a tariff carrying rates in accordance with the contract, these rates having been published as applicable only on train load lots, and that this tariff was filed with the Florida Commission. The Florida Commission refused to accept into its files this tariff as applicable only on train load lots and insisted upon the cancellation of the rates, or else the application of the rates without reference to the number of cars, application to also be made uniformly between all points on the A. C. L. Railroad in Florida and not merely on that part of the A. C. L. which was formerly the Jacksonville & Southwestern Railroad.

I digress from the recitation of Mr. Delano's statement to say that it is under this filing with the Florida Commission, and not under the terms of the contract, that the Wilson Cypress Company and the Cummer Cypress Company have obtained and are obtaining the benefit of those low rates to points like Palatka, and Lacoochee, which are both situated on lines of the Atlantic Coast Line but which lines were never owned by the Jacksonville & Southwestern Railroad Company. The Jacksonville & Southwestern Railroad Company was about ninety miles long and ran from [fol. 975] Jacksonville and environs to Newberry or a few miles west thereof. It is also under the filing of this tariff that the Putnam Lumber Company receives the benefit of these rates. There is no semblance of contract, except as I will hereafter discuss, between the Atlantic Coast Line Railroad Company and the Wilson Cypress Company or the Putnam Lumber Company or the Cummer Cypress Company.

Returning now to a recitation of Mr. Delano's statement: He stated that out of a desire to more than fully and more than fairly live up to the agreement with the Carpenter-O'Brien Company, the A. C. L. Railroad had made filings with the Florida Commission, and in keeping with the Florida Commission's ruling above mentioned had made these rates applicable in units of carload lots over all of its lines

in Florida for the distance mentioned without regard to whether the movement was over all or any part of the lines formerly owned by the J. & S. W. Railroad. It was explained that the contract with the Carpenter-O'Brien Company is limited to logs cut in Taylor and Lafayette Counties, and, by its terms, is to expire when one billion feet shall have been cut.

Attention was called to the fact that the maximum distance to which the Carpenter-O'Brien scale was applicable is 170 miles.

There was then a discussion of the Carpenter-O'Brien rate as compared with other rates in other Southeastern States. Mr. Delano stated that regardless of the measure [fol. 976] of the rate, the Atlantic Coast Line did not desire to attempt to break a contract which in 1914 it had entered into with the Carpenter-O'Brien Company, but he did clearly say that the Atlantic Coast Line could not agree to extend those rates from points in Florida to points in Georgia, or intrastate or interstate in the remainder of the Atlantic Coast Line's territory, because the Atlantic Coast Line has a number of important log movements elsewhere on its system, all of which move on rates materially higher than the Florida rates, and to do so would bring about a serious and unwarranted reduction in the Atlantic Coast Line's revenue. Mr. Delano stated that if the complaint of the Georgia Public Service Commission came to a hearing, the Atlantic Coast Line would defend the reasonableness of its existing interstate rates, and that while the Florida intrastate rates are very low, the Atlantic Coast Line would submit the entire history of those rates with an expression of its desire to live fully up to the terms of the Carpenter-O'Brien contract—now known as the Brooks Scanlon Corporation contract—as long as it is legal to do so without extending there low rates to interstate business or to other log hauls (Tes. p. 884).

I desire to add here that the summary of the assurances extended by Mr. Delano at the July 24, 1926, conference, as stated in the record here on the 20th by Mr. Foley, are correct and in accordance with the foregoing.

I am authorized to say that the statements of Mr. Delano [fol. 977] and Mr. Davis in that conference which you have summarized continues to be the position of the Atlantic

Coast Line Railroad Company. And I may say that the Atlantic Coast Line's position on this subject—because of what is considered the moral aspects—is now and has been in accordance with Mr. Delano's and Mr. Davis' statements as I have undertaken to summarize them. My testimony has already undertaken to show that these rates are, per se, and relatively, very low. I again call attention to the fact that the Atlantic Coast Line has outstanding but one document dealing with the rate on intrastate movements of logs in Florida, and that was made with the Carpenter-O'Brien Company, which has been succeeded by the Brooks Scanlon Corporation. The Atlantic Coast Line Railroad Company has no semblance of a document dealing with rates for any other Florida saw mill and is under no arrangement in reference to rates on logs with any person or corporation except as above stated. I referred to a document between the Atlantic Coast Line and the Wilson Cypress Company, dated March 22, 1926, and heretofore offered in evidence as Exhibit No. 31; and that between the Atlantic Coast Line Railroad Company and the Cummer Cypress Company, dated March 20, 1926, and heretofore introduced as Exhibit No. 28; and that between the Atlantic Coast Line Railroad Company and the Putnam Lumber Company, dated February 16, 1923, and heretofore offered in evidence as Exhibit No. 34. Those documents do not un- [fol. 978] dertake to fix rates, They are service contracts. The contracts to which I have reference in making that statement are as follows: Paragraph seven of each of these contracts contains the following: "The (blank) Company agrees to pay promptly to the Railroad at the rates provided for in current tariffs, all freight and demurrage charges due for the movement of said logs or for the detention of cars, for a period greater than that permitted in the proper and lawful tariff of the railroad governing same."

Paragraph twelve of each contract provides that it shall become effective upon a certain date and "shall thereafter continue in force and effect until terminated by either party hereto, by giving to the other party thirty (30) days' notice in writing of the intention to terminate this agreement." The Cummer Cypress Company's agreement became effective on the 19th day of June, 1926, the Wilson Cypress Com-

pany's agreement on the 13th day of July, 1926, and the Putnam Lumber Company's agreement on the 25th day of August, 1922. Now, in connection with the latter, the Putnam Lumber Company's contract was merely the substitution of the Atlantic Coast Line's contract for that of the Railroad Administration, and consequently, the date effective is somewhat retroactive to the date of the contract. In other words, the date effective is before the date of the contract. The date effective was put back to the assumption of the contract relation by the Atlantic Coast Line Railroad so as to make it a continuous contract.

I know what has been the attitude of the Florida Rail- [fol. 979] road Commission with reference to these railroad log rates. Yes. In my previous direct testimony I filed exhibits showing that those rates met with criticism from the Florida Commission, because they were thought by the Commission to be unreasonably low and a burden upon the Company's other traffic. These criticisms of the Florida Commission have been well known. The attitude of the Florida Commission on this subject has been no secret and has been one of the well known traffic facts. I heard Mr. Wells' statements, at this week's session, which I understood to be, in substance, that the written communications from the Florida Commission, copies of which I filed in this record, were written without specific investigation as to the remunerative character of the rates; that the Florida Commission now feels that as a result of its cost study, very recently made, the log rates in Florida are fairly remunerative, but that the Florida Commission does not take the position that this intrastate scale would be reasonable for interstate application because of the fact that if there should be a movement of logs from points in Florida to points in Georgia, they would in all probability be moved in single car units. Chairman Wells' statements do not take into account the fact that under the requirement of the Florida Commission this scale of rates is applied universally in Florida over the Atlantic Coast Line on any number of cars. His statement make no mention of the fact that Mr. Pettijohn's recent cost study was based entirely upon train load operations, and that even supposing that [fol. 980] there is some difference left between the total

per car charge collected and the expenses which his cost study allocates to that service, such result would not be representative of that situation in which logs are moved in single car units. The contention of the intervenors that the cost of transportation in train load lots is much less than the cost of transportation in single car units is correct. This is, of course, true both as to interstate movement and intrastate movement of logs. The Florida Commission, by its action heretofore taken, has required the Atlantic Coast Line to apply the rates intrastate to the unit of a single carload, and the pending complaint of the Georgia Public Service Commission seeks to have the Interstate Commerce Commission order into effect reduced rates to apply from points in Florida to points in Georgia in units of a single carload and not limited to train load lots, the unit upon which the cost study was prepared.

I have examined the exhibits on yesterday, I think it was, by the Georgia Commission. Exhibit 46 is merely a statement of the existing rates, from the indicated points in Florida to indicated points in Florida and in Georgia, tariff references being given, and, of course, the tariffs will speak for themselves as to the correctness of the figures. The other exhibits, except the last one, are log rate scale comparisons which deal only with one interstate scale, the comparison in all other respects being with intrastate scales. The fact that the exhibits compare—I am making a general [fol. 981] statement about the several exhibits—these exhibits compare our proposed scale, which is the Alabama scale, with several intrastate rates, and in no case is a voluntary rate shown in these exhibits with the exception of the interstate scale, which we propose to reduce (Tes. p. 890).

Now, discussing the individual exhibits, I will mention No. 47 first. This is a comparison between the scale as submitted by me in this case with the North Carolina intrastate rates applied uniformly in North Carolina on lines of seventy-five miles or more in length. These rates were made by the legislature of North Carolina, or at least through a commission appointed by the Governor of North Carolina as a result of the contentions by the legislature, at which time there was an effort to establish a general system of rates in North Carolina on the Minnesota basis.

That was in 1913. As a result of the agitation in the legislature, the Governor appointed the commission, who reviewed all the rates, took them out of the hands of the corporation commission, and finally made these log rates, among others. We were under the threats of penalties, and the record of that situation has been shown in several cases before the Interstate Commerce Commission. The managements of the railroads, through their presidents, finally accepted the rates as required by the legislative commission through the Governor of North Carolina, but filed with the Interstate Commerce Commission a formal protest calling attention to the fact that the rates so established were mani- [fol. 982] festly discriminatory and unfair to the North Carolina carriers; in other words, there was nothing of a voluntary character in the North Carolina log rates. And I might call attention to the fact that it is only by considering the fact that the rates shown in this exhibit include two 25 per cent increases that you can get a proper idea of how very low the North Carolina authorities made the rates in 1914.

Exhibit No. 48 compares the scale as proposed by the Atlantic Coast Line in this case with certain rates applicable per thousand feet between designated points in North Carolina. Incidentally, with the exception of the rates to Goldsboro, Wilson and New Bern, the rates are paper rates in the absence of any log movement at all, which is equivalent to saying that we are moving logs to only those three points. These rates were made by the Supreme Court of North Carolina on appeal in a case brought against the Atlantic Coast Line by a Wilmington party who demanded the application of our net rates on logs, the product of which were shipped from Wilmington by water. The Supreme Court of the State passed upon that situation, and, under the theory of discrimination, required the application of those net rates as the rates to Wilmington proper. Thereupon the North Carolina Commission established the rates to Wilmington on the same basis and have constantly required the extension of them to other points of destination ever since, wherever there is any demand for them. Fortunately, at this time, as I have said, we handle a very [fol. 983] limited amount of logs under this scale.

Exhibit No. 49 compares our proposed scale with the South Carolina intrastate rates. This comparison, by the way, indicates the changes that have been made or will be made in the next few days in the South Carolina intrastate scale. Generally speaking, the changes are reductions because the South Carolina scale is slightly higher throughout than the Alabama scale, which we now propose. I may say in this connection that only yesterday the Interstate Commerce Commission has handed down its decision in the Southern Cotton Oil Company's case, covering logs from South Carolina to Savannah, and have approved the Alabama scale, which is the scale that we are submitting in this case. That case was Southern Cotton Oil Company versus The Atlantic Coast Line, which covers rates from South Carolina stations to Savannah (Tes. p. 892).

Exhibit No. 50 is apparently submitted for the purpose of comparing joint line rates between stations in South Carolina to four single line rates. As a matter of fact, however, for the purpose of rate making, the South Carolina Commission considers the Coast Line and the Charleston & Western Carolina Railway as one railroad, under the theory that the railroads in that State under the same control or the same management are considered as one system. So that these rates merely reflect the single line scale in South Car- [fol. 984] olina applied jointly under that rule.

Now, I will pass over Exhibit No. 51 as to Georgia intrastate rates because it is probably not necessary for me to refer to them.

Exhibit No. 52 is a comparison between our proposed scale and the average of our interstate scale as now in effect and the several intrastate scales. Of course, the same general statement might be made with respect to this as was made in connection with the statements covering the several intrastate situations. In other words, if the State rates are low for individual considerations, why, the average must necessarily be low also for consideration as a proper measure for comparison.

Exhibit 53 is a financial statement showing increases over the years 1914, 1921 to 1925 inclusive. Manifestly, both operating revenues and operating expenses must have increased during the years 1914 to 1925 inclusive. First, the rates themselves have been subject to two general increases

of 25 per cent. each; and, second, the normal growth of traffic has increased the revenues. Now, there is a comparison of percentage increases in the gross earnings and the net earnings, which is equivalent to saying that the net earnings have increased a larger percentage than have the gross earnings. Now, I only want to say in connection with that that it would be most phenomenal if after the many millions of dollars that have been spent for providing increased efficiency and reducing operating costs there should not have [fol. 985] been reflected in some way a difference in the percentage changes between operating receipts and operating expenses. I might state that within the last few years the Atlantic Coast Line has spent a good many million dollars in increasing its facilities, and that, of course, has naturally had the result of not only more efficiency but increased economies.

"Q. What, as you understand it, is the average actual weight per foot of these Florida logs?

"A. Well, Mr. Foley's last year's movements average about ten and a half pounds to the foot, or ten thousand four hundred pounds to the one thousand feet."

Incidently, I meant to refer to the fact that in the North Carolina case, Mr. Price reduced the per thousand foot rates to twelve dollars per thousand feet. If he should adopt the same basis of rates—and of course it would vary, he goes upon the weight per thousand feet—but if he should adopt the same basis of weight per thousand feet as occurred in the case of the Brooks Scanlon logs during 1920, it would add one-half cent per hundred pounds approximately in that scale that he has shown in North Carolina.

"Mr. Price: Mr. Examiner, if I may, I would like to state that there right at this point the authority for the estimate of twelve thousand pounds, that was testified to before the Georgia Public Service Commission by the traffic manager of the North Carolina Pine Association, and it was proper to apply it to this North Carolina scale."

[fol. 986] The Witness: Well, I just want to say in that connection that there are various and sundry bases for figuring weights on logs measured per thousand feet. Of course, on the general principle of measuring logs, the

smaller the logs the more they weigh per thousand feet; and hence, the larger the logs are, the lower weight per thousand feet you will have. So that has to be taken into consideration; and it is never safe to assume that by adopting any fixed rate per thousand feet that we are accurately stating the weight per thousand feet. Now a good many people use twelve thousand pounds in the way that Mr. Price does, but as applied to the movement of the Brooks Scanlon logs that apparently is a little high.

Cross-examination.

(By Mr. Price:)

As to whether the exhibits, as filed by the Georgia Commission, give a complete picture of the log rates in effect today over the lines of the Atlantic Coast Line, of course we have other rates that you, Mr. Price, haven't shown, but in so far as they go, and without having checked the correctness of the figures, this is a pretty complete statement of our inter- and intrastate rates as they exist today, although we have some rates, even today—interstate rates—that are higher than our interstate mileage scale. What I mean to say is this: that our interstate mileage scale is not applicable and that the specific rates are somewhat [fol. 987] higher than the interstate mileage scale. Now, that is a part of the unification of rates that we are now making, and we, of course, will reduce this to whatever scale is accepted for informal application, and we propose this on the basis of the Alabama scale. This Alabama scale as applied to our movements would add something to the aggregate revenue of the Atlantic Coast Line Railroad system.

I will present for examination the actual memorandum of what transpired in Mr. Delano's car, to which reference has been made, for your examination.

(By Mr. Fred Davis:)

"Q. Mr. Perrin, you made some reference to the statements made by Commissioner Wells, the Chairman of the Florida Railroad Commission. Don't you also recollect in connection with that statement that Mr. Wells stated that

the Atlantic Coast Line had been invited for a period of six years to make any showing to the Florida Railroad Commission that the rate in Florida on logs was unreasonable, and that in the absence of such showing he concluded from that that the rate was reasonable?''

''A. I understood from Mr. Wells' statement that he interpreted their letters. I thought I would let the letters speak for themselves. Mr. Wells did make the statement.''

The purpose of my statement as to what Mr. Wells said was to draw attention to the fact that the Florida Commission's conclusion about the reasonableness of the rate was predicted on a cost study that was limited to train load [fols. 988–990] movement only. That was the purpose of all I said concerning Mr. Wells statement.

''Mr. Davis: That concludes our rebuttal testimony.''

''Examiner Brown: The Examiner rules that oral argument will be heard at this time'' (Tes. p. 913).

(Thereupon oral argument was heard before the Examiner. Tes. pp. 914 to 935, inclusive.)

(Whereupon, at 12:30 p. m., January 21, 1927, the hearing of the above-entitled matter was closed. Tes. p. 936.)

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[fol. 991] Before Interstate Commerce Commission

Docket 18364

Georgia Public Service Commission

vs.

Atlantic Coast Line Railroad Company

Reply to Exceptions of Complainant to Report Proposed by Examiner R. M. Brown

Now comes Intervener, as of record and for his reply to Exceptions of Complainant to report proposed by Examiner, does respectfully say:

First

That statement embodied in first paragraph, Page 2, of Complainant's Exceptions, that ''Complainant in this

case represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation,'' is incorrect and misleading, first, because the Interstate scale from Florida to Georgia is not of interest to Georgia manufacturers, and, second, because even if Georgia manufacturers were interested, this Intervener emphatically denies that Complainant represents all of such manufacturers.

[fol. 992] The record in these proceedings, Tr. 909, reflects the fact that on September 22, 1926, practically the entire log and lumber interests of the State of Georgia appeared before the Georgia Public Service Commission, the Complainant here, and formally and earnestly petitioned that Commission to withdraw this instant complaint.

Further, this intervener's Supplement to Exhibit 37, filed in these proceedings upon Complainant's request, indicates a membership of thirty-one (31) manufacturers in the State of Georgia, and it was in the interest of such manufacturers this intervener appeared, of such manufacturers two (2) appeared as witnesses for Complainant; these two manufacturers, however, maintain no individual traffic department in the conduct of their business, and their evidence clearly indicated their utter unfamiliarity with issues actually involved in these proceedings, they were only concerned with a reduction in the interstate rate as indicated in the first paragraph of Sheet 8 of Examiner's report.

Your intervener further desires to state that while this Association in representing Georgia lumber manufacturers generally, has not denied nor attempted to deny to any member manufacturer his inherent privilege of expressing his individual views, and when such views accord with our own, it is a satisfaction, but when there is a conflict it has no deterrent effect upon your intervener's procedure in attempting to protect to the best of its ability such member's interests, which he jeopardizes through lack of understanding or unfamiliarity with issues actually involved.

In view of such facts your intervener respectfully asserts its inability to reconcile statement of complainant hereinbefore referred to with the actual facts.

Second

That Complainant's statement on Page 2, second paragraph, alleging that record shows the interstate scale is unreasonably high as compared with the Florida intrastate [fol. 993] scale, the extent of such unreasonableness being predicated upon the ability of the interstate shipper to absorb such difference in transportation charges, is without merit, is a mere unsupported, visionary allegation.

The record clearly shows that the measure of the interstate scale has not had, and can not have, any bearing whatever upon such interstate transportation.

Third

That Complainant in third paragraph, Page 2, asserts: "The complaint of the Georgia Public Service Commission is not an attack on any rates which have been fixed or required by Railroad Commission of Florida," but gratuitously adds: "Such rates were condemned by the Florida Railroad Commission."

Your intervener respectfully asserts that Complainant having here thus expressed lack of interest in the Florida intrastate rates, and at no time expressing even an opinion as to what the interstate scale should be or even combating the record that any interstate scale must, of necessity, be of no service, occupies the unenviable position of not knowing what he is asking for, or what to do with it if he got it, reaffirms our belief and our assertion that Complainant's entire procedure has been without merit, is directly contrary to the best interest of the log and lumber interests of Georgia, is visionary in theory, unsound in fact, and has been and is, merely a vain and empty thing.

Further, it is emphatically denied that present Florida Railroad Commission or its predecessor, condemned the Florida intrastate rates; the record reflects the fact that Florida Railroad Commission has not only approved the Florida intrastate scale, but has enforced its continued maintenance, and in these proceedings continues to sanction and approve such scale.

Fourth

That as to first paragraph, page 3, of Complainant's Exceptions, your intervener asserts that Southeastern For-
[fol. 994] est Products Association, and its predecessor, Georgia-Florida Saw Mill Association, has served and represented Georgia log and lumber interests since its organization in 1899, appearing many times in behalf of Georgia log and lumber interests before the Georgia Public Service Commission and the Interstate Commerce Commission, and even at the present time is before the Georgia Public Service Commission in such Commission's Docket 15416 (2), and before Interstate Commerce Commission in their Dockets I. C. C. 16383 and I. & S. 2429.

Further, as hereinbefore stated, this intervener appeared in this instant proceeding in behalf of its Georgia membership, as indicated by Supplement 1 to Exhibit 37 of record, and again emphatically denies that Complainant appared for or was authorized to appear for Georgia manufacturers, and again respectfully calls Commission's attention to intervener's statement, paragraph 3, page 909, of record, to the effect that not only this intervenor, acting for its Georgia manufacturers, but practically all other log and lumber interests of Georgia, appeared before the Georgia Public Service Commission on September 22, 1926, and formally requested the withdrawal of this case, a stenographic record being made of such conference under Georgia Public Service Commission's Docket 16197.

The statement that this intervenor failed to comply with rules of practice in the matter of intervention is, of course, too utterly absurd to seriously consider other than to say your honorable Commission felt this intervener's interest was involved, as evidenced by the fact we were permitted to intervene as of record.

Fifth

That Complainant in last two paragraphs on Page 3, and first paragraph on Page 4, merely stated:

a. That Complainant was not attempting to say what should be the measure of the interstate scale.

b. That Complainant does not feel the Examiner is justified in recommending dismissal of the complaint.

[fol. 995] Your intervener in reply asserts that:

a. Complainant has no real interest in the interstate scale, for the record unquestionably proves there had not been, was not, and could not be a movement in interstate commerce.

b. The Examiner has not recommended a dismissal of the complaint, and, consequently Complainant's exception to such action need not be discussed.

Sixth

That Complainant on Page 4, paragraph 2, in its visionary wanderings finally says that: "Beginning at Page 10 of record it is shown that already the State of Georgia has lost some manufacturing interests to the State of Florida, and other manufacturers located in Georgia on the border of Florida were then negotiating with the view of moving their industries to Florida."

Your intervener asserts such a statement is both misleading and incorrect. One manufacturing interest, the Elberta Crate Company, of Bainbridge, Georgia, did establish a plant at Tallahassee, Florida, in 1922, over three years before this complaint was filed, and in as much as the raw material for use at the Tallahassee plant was adjacent to such plant, no doubt that factor entered into the decision to establish a plant there.

As to statements of Messrs. Charles I. Harrell and J. M. Simmons, appearing on Pages 14 and 15 of record, such statements were made, as Witness Price states on Page 12 of record, at July 25th hearing before Georgia Public Service Commission, at which time Messrs. Herrell and Simmons, as well as this intervener and various other Georgia log and lumber interests, were formally before the Georgia Public Service Commission objecting to and protesting against the proposed advance in the Georgia intrastate rates, and the threat to move to Florida was not because they would have lower rates in Florida, but because they could not survive in Georgia under the proposed advance in the Georgia intrastate rates.

[fol. 996] Such testimony is a matter of record of Georgia Public Service Commission under their Docket 15416 (2).

Regardless of these protests, however, the Georgia Pub-

lic Service Commission, under its order of April 15, 1925, as referred to by Witness Price in third paragraph, Page 12, of this record, advanced the Georgia State rates effective June 1, 1925, but because of continued insistent protests by the Georgia manufacturing interests the effectiveness of such order was postponed from time to time, until on Septmber 28, 1926, in a letter to the Georgia manufacturers, the Georgia Public Service Commission denied the petition of Georgia manufacturers to withdraw this instant case, but under same date issued a formal order rescinding its order of April 15, 1925, hereinbefore referred to.

Your Commission's attention is respectfully directed to the fact that this order of rescindment was of date of September 28, 1926, just twenty-two (22) days before this instant case was assigned for hearing, and was in part heard, and six (6) days after the formal appearance of Georgia mnufacturing interests before the Georgia Public Service Commission in protest against this instant case, at which time Georgia Commission's attention was brought to the fact that while such Commission, the Complainant in this instant case, was asking your honorable Commission to reduce the interstate rates from Florida to Georgia, under which they readily admitted no commerce had moved, and which in these proceedings it was proved no commerce could ever move, they, the Georgia Public Service Commission, at the same time, were proposing to advance the Georgia intrastate rates under which thousands of cars move annually and over the protests of the Georgia manufacturers, who plainly stated they could not operate under such proposed advances, and would be compelled, in such an event, to move their plants and their facilities to Florida, as stated by Witness Price on Pages 14 and 15 of this record.

[fol. 997] Seventh

That complainant in first portion of paragraph 2, Page 5, again asserts that Georgia Public Service Commission in these proceedings represented all Georgia shippers. It hardly seems necessary to again deny such an absurd statement, both the record and preceding answers to Complainant's Exceptions refuting such fact.

Eighth.

That Complainant errs in statement contained in second portion of second paragraph, Page 5, for the record abundantly substantiates the Examiner's opinion that Georgia shippers who testified for Complainant were only interested in a lowering of the interstate rate, and again errs in asserting that submittal by defendant carrier of a lower line of interstate rates presupposes an acceptance that existing interstate rates were unreasonably high.

For defendant carrier being aware that there had been no movement under existing interstate scale, and satisfactorily convinced by this record that there could be no movement under any scale whatsoever, could have no logical objection to accepting a lower interstate scale, especially in view of the fact that such lower interstate scale as was offered by defendant carrier had been found to be a reasonable interstate scale by your Commission in the several proceedings referred to by the Examiner on Sheet 10 of his report.

Ninth

That as to first paragraph, Page 6, this intervener makes no reply. That is a matter for Florida interveners to answer.

Tenth

That Complainant in last paragraph, Page 6, and first paragraph, Page 7, calls attention to testimony of Witness Perrin regarding single car movement.

[fol. 998] As we read the record such witness merely said that defendant carrier handled some single car lots. The point is, as the record clearly indicates, and the Examiner finds: "The movement in single car lots is unimportant."

Eleventh

That Complainant on Page 7, second paragraph, and Page 8, first paragraph, excepts to Examiner's finding "that relief is desired only with respect to rates from points lying North of Jacksonville, Gainesville, et cetera," and to Examiner's finding that "the complaint does not attack the South Florida rates."

Answering, your intervener asserts that Complainant's own witness expressed an interest only in rates from that portion of Florida adjacent to Georgia, and certainly by no stretch of even the Complainant's imagination can rates from or between points in South Florida be considered as involved herein.

Twelfth

That Complainant in second paragraph, Page 8, and first paragraph, Page 9, is evidently attempting to so express himself as to indicate exception to Examiner's finding that rate Exhibits filed by Complainant were not persuasive of the unreasonableness of the proposed interstate rates.

Obviously, Complainant errs in assuming, that, notwithstanding the fact that various interstate scales, as shown by Complainant, are lower than is the proposed interstate scale, the Examiner has affirmly found that the scale proposed by defendant carrier for interstate application is just and reasonable.

Also, it should be borne in mind that not only does the proposed interstate scale reflect reductions in the present rates, but in addition the Examiner precisely finds that the proposed interstate scale has not been shown to be unreasonable.

[fol. 999] In view of such finding, it is not relevant in these proceedings to determine what, if any, consideration should be given the various intrastate scales throughout Southern territory.

Thirteenth

That Complainant in last paragraph, Page 9, and first paragraph, Page 10, professes inability to understand Examiner's reasoning that "the force of the comparisons is lessened by the inclusion in the averages of the Florida-Georgia interstate rates which defendant proposes to reduce" * * *. We fail to see how Examiner's meaning could be more clearly stated, for the defendant carrier had, prior to the submittal of the comparisons by the Complainant, proposed to reduce the interstate scale and certainly the tender by Complainant of an Exhibit showing a scale that did not reflect the proffered reductions was not a true picture for comparative purposes.

Fourteenth

That in second paragraph, Page 10, Complainant excepts to Examiner's finding on Sheet 11 that "Complainant's Rate Expert admitted that the higher rates thus prescribed at the time were on a reasonably low basis," rates under consideration being Georgia State rates ordered upward by complainant in 1925.

This so-called "Exception" is merely playing with words, for, answering question of Counsel of intervening carriers,

Question. "And we are entitled to believe that based on that testimony, and their best information, the scale of rates which the Georgia Commission required the railroads to establish, represented its best judgment as to reasonable rates?"

Complainant's witness answered:

"At that time, yes sir."

If that did not mean, as Examiner states, that Georgia Commission considered such rates "on a reasonably low basis," it does not mean anything.

Further, in the same paragraph, Complainant says: "The order referred to by the Examiner was rescinded when [fol. 1000] this Florida situation was brought to the attention of the Georgia Commission."

Your intervener desires to bring to your Commission's attention that in the last sentence on Page 12, and the first sentence on Page 13 of record, Complainant states that: "This Florida situation was brought to its attention in July, 1925," while, as a matter of fact and of record, the order of rescindment was dated September 28, 1926, or fourteen (14) months later. Further comment appears unnecessary.

Fifteenth

That Complainant, Page 10, last paragraph, and first paragraph, Page 11, states, The question is:

a. What is a reasonable rate on logs between points in Florida?

b. What is a reasonable rate on logs between points in Florida and points in Georgia?

c. Why should not the Georgia manufacturer be placed on an equality with his Florida competitor?

Answering, your intervener respectfully avers:

a. That Florida intrastate rates in and of themselves are not in issue here.

b. Examiner has found that the interstate rates proposed by the defendant carrier have not been shown by the Complainant to be unreasonable.

c. The record abundantly shows that the Georgia manufacturer is not at a disadvantage as compared with the Florida manufacturer, and that such burden as is upon the Georgia manufacturer is occasioned by the intrastate Georgia rates over which the Complainant here, the Georgia Public Service Commission, has full jurisdiction.

Sixteenth

That as to Complainant's Exceptions on Page 11, last paragraph, and Page 12, first paragraph, this intervener makes no answer, assuming that interveners directly involved will reply.

[fol. 1001]

Seventeenth

That as to Complainant's Exceptions on Page 12, last paragraph, and Page 13, first paragraph, Examiner's conclusion is fully supported by the record.

Eighteenth

That as to Complainant's declination, Page 13, second paragraph, to discuss Examiner's reference to outbound movement by water, asserting such rates are not here involved, your intervener asserts that Examiner did not refer to the water rates outbound as controlling the measure of inbound rail rates.

Nineteenth

That at Page 13, last paragraph, and Page 14, first paragraph, the burden of Complainant's Exception is that, Examiner finds that there is within the record no proof of discrimination.

Certainly the record fully substantiates such finding. Apparently Complainant is unable to understand your Commission's expression in 81-I. C. C. 346, that: "A finding of unlawful discrimination cannot be predicated on a mere assumption or assertion of its existence."

Twentieth

That on Page 14, second paragraph, Complainant, in excepting to Examiner's citation of decision of Supreme Court in Wisconsin Railroad Commission, v. C. B. & Q. Railroad Company, 257 U. S. 563, merely illustrates his inability to comprehend the meaning of the decision cited.

In this decision the Court in substance said:

a. That the Commission is given unified control of interstate and intrastate commerce only to the extent of maintaining efficient regulation of interstate commerce.

b. The Court's conclusion does not involve the general regulation of intrastate commerce.

[fol. 1002] c. Action of the Commission should be directed towards and its authority extended to intrastate commerce only when such intrastate commerce affects interstate commerce to the extent of creating a real discrimination to a substantial degree.

Your intervener respectfully asserts that no choice of words could possibly have more clearly defined the meaning of the decision cited, and it is obviously unnecessary to further dwell thereupon.

Twenty-first

That Complainant, beginning at second paragraph, Page 15, and continuing through Page 16, first paragraph, merely expresses his customary disagreement, or rather dissatisfaction, with the record in the case, for such record abundantly shows that not only interstate commerce remained and remains uninjured to a material extent, but it plainly indicates that such interstate commerce has not been affected, nor can it be affected to any extent, and, further, as hereinbefore stated, your protestant emphatically denies,

and the record fully substantiates such denial, that the level of the interstate scale has caused any Georgia manufacturers to leave that State and move their operations to Florida, nor is there the slightest evidence in this record that in the most remote way could indicate that Georgia manufacturers on the border line of Florida have suffered any financial loss whatsoever by the existing transportation charge adjustment.

Twenty-second

That Complainant in last paragraph, Page 16, and its continuation on Page 17, makes two assertions, viz:

a. That there is a large movement of logs between points in Florida not covered by these approximate cost studies.

b. That no evidence has been submitted showing there is any difference in the transportation conditions from Florida to Georgia as compared with the Florida intrastate movement.

[fols. 1003 & 1004] Answering, your intervener asserts:

a. That there is not a large movement of logs between Florida points other than as covered by the cost studies in these proceedings, as the record fully indicates.

b. That the record fully substantiates the fact that there is not, and there has not been, an interstate movement, and, consequently, there could not have been, nor is there a similarity of transportation.

Conclusion

Your intervener having fully answered Exceptions of Complainant, respectfully submits that Examiner's report being in full harmony with the record, is unquestionably sound and proper, and should be upheld.

Respectfully submitted.

Southeastern Forest Products Association (Formerly Georgia-Florida Saw Mill Association), by J. S. Farish, Traffic Manager.

Dated at Jacksonville, Florida, September 26, 1927.

[fol. 1005] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

REPLY OF JACKSONVILLE TRAFFIC BUREAU, INTERVENOR, TO EXCEPTIONS TO PROPOSED REPORT

Comes now the Jacksonville Traffic Bureau, an Intervener in the above entitled case, and for its reply to the exceptions filed to the report of Examiner R. M. Brown, by the Georgia Public Service Commission and the intervening carriers, respectfully represents as follows:

A. Reply to Exceptions of Georgia Public Service Commission

1. This intervener takes issue with the very first statement on page 2 of complaint's exceptions wherein it states that "The Georgia Public Service Commission, complainant in this case, represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation." This statement is not borne out by the record. In fact, the record shows that the Georgia-Florida Sawmill Association, one of the [fol. 1006] interveners, had a membership composed largely of Georgia mill operators. The record also shows that mill operators from all over the State of Georgia requested Chairman Perry to withdraw the complaint after it was filed. As was pointed out in the brief filed by this Intervener, the Georgia Public Service Commission closed its case at the Valdosta hearing, without showing that it represented a single shipper of logs in the State of Georgia, and without offering a single witness who was engaged in shipping logs.

2. In the second paragraph on page 2 of the exceptions, Chairman Perry says: "It is alleged, and the record shows that the interstate rates on logs charged by the Atlantic Coast Line Railroad from points in Florida to points in Georgia are unreasonably high as compared with the rates charged by the Atlantic Coast Line Railroad for handling logs intrastate between points in Florida, to the extent that the Georgia manufacturer is prevented from purchas-

ing logs in Florida, the difference in the rates being too great for the Georgia man to absorb against his Florida competitor."

This intervener is unable to determine just what the Chairman means by this very involved sentence. If he intends to imply or state that the record establishes the fact that the Florida intrastate rates have anything to do with the Georgia manufacturers' inability to purchase logs in Florida, this we emphatically deny. The record clearly establishes that there is no Florida timber available for purchase by Georgia mills. The record also shows that if there were available timber for purchase by Georgia interests, they would move their mills to the timber whether the mills were located in Georgia or in Florida, rather than to attempt to transport logs even on rates as low as the Cummer scale.

3. At the bottom of page 2 of the exceptions we find the following: "The rates being charged by the Atlantic Coast [fol. 1007] Line Railroad in Florida, being voluntarily established by that line, and its predecessors, and were condemned by the Florida Railroad Commission, but continued in force voluntarily by the Atlantic Coast Line Railroad." The Florida Railroad Commission, both at the hearings in this case and in its brief, emphatically denied that the Commission had ever condemned these rates but had on the other hand, after investigation, reached the conclusion that the rates are reasonably compensatory. The Commission's attention is invited to the statement of Chairman Wells, beginning at page 668 of the record and the statement of the Florida Railroad Commission on pages 3 to 5 of its brief in this case.

4. At page 3 of the exception, Chairman Perry takes issue with the Examiner in the following extract from his proposed report: "Complainant's evidence was mainly in support of its allegations under Sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the Florida rates were found just and reasonable, they should

be made to apply on log traffic between Florida and Georgia." The Chairman remarked that the Georgia Commission is not familiar with any rule of the Interstate Commerce Commission or any law that requires the Complainant to suggest to the Commission what rates it should use to remove discrimination. In this connection, your attention is invited to Rule 3, Paragraph "N" of the rules of practice, which reads as follows: "The complainant should contain the issue as to what should be the rate, fare or charge, thereafter to be observed in order to remove such advantage or prejudice." Again, Rule 14, Paragraph "A" requires: "That the brief should include requests for such specific findings as the party thinks the Commission should make." The Florida interveners tried repeatedly during the hearings to get Chairman Perry or his rate expert to [fol. 1008] state what they considered a reasonable rate for interstate application. They repeatedly refused to answer this question directly, contenting themselves with saying that if the Florida intrastate rate is reasonable for intrastate application, it should be made applicable to intrastate traffic. Such evasion convinces this intervener that the sole purpose of this complaint was an endeavor on the part of Mr. Perry to justify increases in the Georgia intrastate rates, which his Commission had authorized and afterwards rescinded, in order that it might be consistent with the position taken in this case. This conclusion is based upon the fact that the order was not rescinded for some time after this complaint was filed.

5. One page 4 of the exception, the Chairman in remarking on the statements of the Examiner that: "No movement under the interstate rates was shown, and complainant admits that there is none" says: "This last statement explains fully the very reason that this complaint was brought. Testimony of witness for the Georgia Public Service Commission, beginning at page 10 of the record shows that already the State of Georgia, has lost some manufacturing interests to the State of Florida and other manufacturers located in Georgia were then negotiating with a view of moving their industries to Florida on account of this rate situation." We believe that the record itself will refute this statement, and invite the Commis-

sion's attention to the testimony of the witness referred to by Chairman Perry. On page 12 of the record, Witness Price testified that in 1925 the Georgia Public Service Commission entered a final order permitting the carriers to advance the intrastate rate on logs in Georgia to approximately the same level as the so-called Alabama-Georgia scale. Quoting further from Witness Price on the same page, he said: "At the insistence of shipper representatives, the effective date of this order was postponed until August 1st, 1925, and a hearing had in July of the same year in order that shippers might have the opportunity of submitting evidence as to why the order should not be [fol. 1009] postponed further or rescinded." Witness Price stated further that "At this July, 1925 hearing, this Florida situation which we have under review in this case was brought to the attention of the Georgia Commission."

Now, let us determine from the further testimony of Witness Price, whether there is any justification for the statements in the exceptions that it was because of this Florida situation that the above order of the Georgia Commission was rescinded, and the complaint in this case brought. On pages 13 and 14 of the record, Witness Price said that at this July, 1925 hearing of the Public Service Commission certain individuals, among them, Mr. W. E. Gardiner, Mr. J. S. Farrish, Mr. Moore and others, testified that if the Georgia Commission increased its rates as then proposed, such increases would probably drive industries located in Georgia to the neighboring State of Florida. We have searched the record in vain, for any statement of Witness Price or of any other witness, which would justify the statement in the exceptions that industries have been driven from Georgia because of the Atlantic Coast Line log rates in Florida. Again, it is evident that Chairman Perry is endeavoring to use the Florida situation for the purpose of justifying increases in the Georgia intrastate log rates which the Georgia Commission had authorized.

In this connection we wish to call attention to the statement of Chairman Perry in Paragraph 2 at page 10 of his exceptions, which is as follows: "All rates prescribed by the Georgia Commission are maximum rates and as testified to by the witness of the Georgia Commission the order referred to was rescinded, when this Florida situation was

brought to the attention of the Georgia Commission, etc." Let the record speak for itself on this point. According to Witness Price, (bottom of page 12 and top of page 13 of the record) as above stated, the Florida situation was brought to the attention of the Georgia Commission in July, 1925. The complaint in this case was filed April 23rd, 1926, and the rescinding order of the Georgia Commission is dated [fol. 1010] September 28th, 1926, less than a month prior to the Valdosta hearing. It was more than a year after the Florida situation was called to the attention of the Georgia Commission, before the order in question was rescinded by the Commission, and it was several months after this complaint was filed before the rescinding order was issued. As before stated, this Intervener can only draw the conclusion from this evidence that the only reason the order in question was rescinded at all was because the complaint was filed and the Chairman of the Georgia Commission could not very consistently ask for lower rates for interstate application than he had prescribed for intrastate application.

6. On pages 4 and 5 of the exceptions, Chairman Perry states that Witnesses Giddens, Davies, Jackson and Simmons all testified to the effect that they were not shipping logs from Florida to Georgia, but had attempted to make purchases in Florida, but were prevented from doing so on account of the unreasonably high rates interstate, as compared with the intrastate rates in Florida. Both Witnesses Simmons and Jackson testified that if the Florida intrastate rates were raised to the level of the present interstate rates they could not buy stumpage in Florida and manufacture it in Georgia. It is true that Witness Giddens insisted that he could purchase such stumpage and manufacture it in Georgia if the Florida intrastate rates were raised to the level of the interstate rates, but as will hereafter be explained in this reply, his testimony can only be considered as opinion testimony because of its indefiniteness and his failure to designate any specific tract that he could purchase under any level of rates. In other words, Mr. Giddens makes out a purely hypothetical case entirely unfounded on fact. The testimony of Mr. Davies is too indefinite and vague to warrant further comment.

7. Chairman Perry states on page 5 of his exceptions: "That the law is very clear; that when the disparity in rates is so great as to prevent the free movement of interstate [fol. 1011] commerce, it works a discrimination and should be removed." That is exactly what the record in this case does not show. On the contrary, it shows that geographical location, distance from tide water, and other physical conditions make the interstate movement of logs impractical and impossible. Surely Chairman Perry cannot hope to remove these differences by rate adjustments.

8. On sheet 8 of the Examiner's proposed report, he states that Georgia shippers testified, in general terms, that there was available timber which could be purchased and transported to mills in Georgia, but the location of such timber was not revealed. Chairman Perry, at page 6 of his exceptions, questions this statement by referring to the testimony of Witness Jackson at the Valdosta hearing in which he said he was negotiating for the purchase of a tract of one hundred and ninety million feet of timber in Florida, known as the Epinger-Russell tract, and that the witness gave the exact location of this timber. As later developed at the Jacksonville hearing, this tract of timber had been on the market for many years and was so located that even if Mr. Jackson had purchased the timber, it would have been impossible for him to transport it in the form of logs to Valdosta for manufacture even on rates as low or lower than the Cummer scale. Mr. Goethe, who purchased the timber testified at the Jacksonville hearing that he bought the timber nearly ninety days prior to the Jacksonville hearing, which would be just about the time of the Valdosta hearing. Thus it would appear that the timber had already been purchased when Mr. Jackson testified, for transactions of this size are not made in a day. The record also establishes that the purchaser of this timber moved his mills into the timber although one of his mills was then located much nearer the timber than Mr. Jackson's mill at Valdosta. We have merely mentioned this feature of the exceptions to emphasize the fact that the refusal of the other witnesses for the Georgia Commission to designate the timber tracts they could purchase, because they feared the Florida interests might take advantage of the information thus obtained, [fol. 1012] can be nothing but mere subterfuge.

9. At the bottom of page 6 of the exception, Chairman Perry questions the following statement of the Examiner: "Most of the Florida Intrastate Log Traffic is in train loads. The less than train loads movement is unimportant." Mr. Perry refers to the testimony of Witness Perrin, of the Atlantic Coast Line to refute this statement. We submit that neither Witness Perrin, nor any other railroad witness gave any testimony showing the relative importance of car lot movements. On the other hand, the Florida witnesses, all testified that the entire movement to their mills was in train loads. So far as this record shows the Examiner is correct in stating that the "less than trainload movements of logs" in Florida is unimportant. The complainant contends, at the bottom of page 7 of its exceptions, that the Examiner had evidently overlooked the testimony of the Witness for the Georgia Public Service Commission at page 25 of the record which states that "The complaint of the Georgia Commission is not confined to any particular manufacturing point in Florida, but Jacksonville and Perry were only used to illustrate the conditions as they exist." If there is anything in the record dealing either directly or indirectly with the South Florida rates, this Intervener is unable to find it.

On page 8 of the exceptions, Chairman Perry discusses the Examiner's summary of the evidence with respect to some of the rate comparisons. After reading his discussion of the Examiner's findings, we are unable to determine what the basis of his exception is, or what argument he intends to advance in support of this exception. Therefore, we are unable to reply thereto.

10. On page 10 of the exceptions, exception is taken to the statement of the Examiner that: "Complainant's rate expert admitted that the higher rates thus described, at this time, were on a reasonably low basis." The Examiner had [fol. 1013] reference to an order issued by the Georgia Public Service Commission in 1925, which was later rescinded. The complainant denies that the rate expert of the Georgia Commission ever said that the rates were on a reasonably low basis, but admits that he did say that at the time these rates were authorized by the Georgia Commission, they represented that Commission's best judgment as to reasonable rates. It states further that all rates pre-

scribed by the Georgia Commission are maximum rates, and would have us draw the conclusion therefrom that there is a wide difference between reasonably low rates and reasonable rates, in the judgment of the Georgia Commission. Without wishing to be facetious, we doubt whether the Georgia Commission ever fixed a maximum rate, that it did not consider reasonably low.

At pages 10 and 11 the complainant discusses the Examiner's findings to the effect that an increase in the Florida rates, to the level of the proposed Georgia scale, would unnecessarily destroy large investments in Florida, without being of any benefit to any Georgia operator. The record is very persuasive of this fact, and the probity of the evidence offered in support of this contention is not questioned by the Georgia Commission. It is unthinkable that the Interstate Commerce Commission would want only to destroy the enormous investments in Florida upon a mere theoretical showing by the Georgia Commission that, because of the lower rates in Florida, the Georgia manufacturer is prejudiced, when there is not one iota of evidence in the record to show that any competition exists or could probably exist, and where any Georgia operator would be benefitted.

11. At the last paragraph of page 11 of the exceptions, in speaking of the Examiner's reference to the tremendous costs of moving the Brooks-Scanlon Corporation from Eastport, Florida, to its timber holdings, (a fact which was clearly established in the record), the Chairman, without taking any exceptions to the remarks of the Examiner, or his conclusions thereon, attempts to draw a special deduction [fol. 1014] to the effect that the examiner intended to indicate that the reasonableness of rates might be determined by the cost of construction. Obviously, there is no word in the record which warrants any false assumption of this kind, and obviously the Examiner had no such fal-acious theory of rate making in his mind. The Chairman is unable to understand how it could be possible to cost more for dismantling and rebuilding, as was stated by the Examiner, than it cost to build the mill originally. It would seem that it is unnecessary to discuss this proposition since anyone knows that labor and material today are many times higher than they were when the mill at Eastport was built and

that many elements of expense would be incurred in the dismantling and rebuilding of a mill that were not elements in building the original mill. For instance, the stoppage of business for a period of approximately one year, would be an enormous element of damage which could only be approximated. Numerous other factors of damage would be encountered, in the removal of the homes of the working force, the employment and breaking in of new labor and employees, and many other items of expense, too numerous to enumerate.

On page 13 of the exceptions, the complainant makes reference to the relatively low water rate, referred to by the Examiner. And says: "The outbound rates on lumber are not involved in this complaint in any way, whatever, and we will therefore not discuss this feature." The only reason for referring to the outbound water rates on lumber was to explain the location of the mills, at tidewater. The record shows that if these mills were to be reconstructed they would be built in the timber itself, regardless of freight rates on logs. The evidence also shows that the mills now located at tidewater, could not exist, even under the Cummer scale, except for their tide water locations.

12. At pages 17 and 18 of the exceptions, Chairman Perry would convey the inference that the Examiner was [fol. 1015] influenced in his decision by the size of the mills in Florida, as compared to those in Georgia. Quoting from the exceptions, he says: "We submit that the testimony of a manufacturer in Georgia, although his output of timber may not amount to more than one hundred thousand feet per day, is entitled to just as much consideration as the testimony of a Florida manufacturer whose output is a million feet of lumber a day." This intervener believes that such an intimation is entirely unfair and wholly unfounded. The difference between the testimony of the Florida operators and that of the Georgia operators was that the former testified about facts, and the latter about theories. It is obvious that the reference here made to large and small mills is in the hope of securing sympathy. There are large and small mills in both states.

13. On page 14 of his exceptions, Chairman Perry refers to the decision of the Supreme Court in Wisconsin Railroad

Company vs. C. B. & Q. Railroad Company, 257 U. S., 563, which was submitted by the Florida interveners in justification of their contention that your Honorable Commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden on interstate commerce. Mr. Perry attempts to discredit the value of the quoted extract from this Supreme Court decision as having any application to the facts in this case. He contends that if there is a disparity in rates, then there should be a finding of disparity, whereas, the Supreme Court said that there should be a substantial disparity, which operates as a real discrimination against and an obstruction to interstate commerce, before the Interstate Commerce Commission could assume jurisdiction over intrastate rates. This Intervener freely admits that there is a difference in rates but this difference does not result in existing or potential discrimination against any Georgia shipper.

14. On pages 15 and 16, Chairman Perry says he is thoroughly in accord with the principle expressed in the Hunter [fol. 1016] Bros. case, which is to the effect that before the Interstate Commerce Commission can require a change in the intrastate rate, it must appear that the intrastate rate affects interstate commerce injuriously, to a material extent. However, he says that this principal does not apply to the instant case. This rather unique position is contradictory. The Chairman says that "If the effect of a rate is such as to cause manufacturers to leave one state and go to another, and is causing other manufacturers located on the border line of the State, heavy financial loss as was proven in this case, then it must follow that it is injurious to a material extent. Such is the overwhelming evidence in this case."

If such were the case, we might be inclined to agree with Chairman Perry in his conclusion. But as has heretofore been pointed out in this reply, there are no such facts in the record. The record does not show that a single manufacturer in Georgia moved from Georgia to Florida or declared their intention of moving to Florida on account of the Atlantic Coast Line log rate. The record is most plain that the only reference to moving industries from Georgia

to Florida, was made by witnesses at a hearing before the Georgia Public Service Commission more than a year before this case was heard, and the only reference to industries moving from Georgia to Florida was the statement of certain gentlemen to the Georgia Commission that if that Commission raised its then intrastate rate as it proposed to do, it would drive industries from Georgia to Florida. It is absolutely unfair for the Chairman to state, as he has in several places in his exceptions, that industries have been driven to Florida because of the Florida intrastate rate when by the words of his own witness, if any industries were driven to Florida, it was because of his purpose to increase the Georgia rate.

15. On page 16 of the record, Chairman Perry says that the rates proposed by the Examiner for interstate application from Florida into Georgia, and his recommendation [fol. 1017] that no finding be made against the Florida intrastate rates, does not relieve the complaint. Mr. Perry states that witnesses for the Georgia manufacturers testified that the rates proposed by the Atlantic Coast Line, which are also those proposed by the Examiner, are entirely too high. In view of these comments of Mr. Perry, we are wondering what will satisfy the complaint. If the proposed reduction will not satisfy, why has he refused so persistently to disclose what he wants the Interstate Commerce Commission to do in this case. It seems rather a paradox, this statement of the Chairman, that these proposed rates of the Examiner are too high, when it is remembered that they are practically the same as the intrastate rates originally authorized by the Georgia Commission, and which were rescinded as a result of a filing of this complaint.

[fol. 1018] B. Reply to Exceptions Filed by Intervening Carriers

The Seaboard Air Line and other intervening carriers in their exceptions to the proposed report set forth first a statement of their grounds of intervention. This statement is not an exception to the proposed report and does not purport to question any statements of fact or position of the intervening railroads in this case. Therefore a reply

to this section of their exceptions is unnecessary other than to point out that the intervening railroads oppose the adoption of the Florida Intrastate rates for Interstate application, whether for the purpose of establishing reasonable maximum rates or for the purpose of removing undue discriminations. Under the Examiner's conclusions the rates proposed for interstate applications are rates which these intervening railroads subscribe to, therefore this particular position of these interveners has been satisfied and they can have no further fear that the intrastate rates will be prescribed for interstate application. Insofar as the issue of unjust discrimination is concerned the Examiner's Report finds in favor of the defendant railroad and the intervening defendant railroads, that there is no unjust discrimination of any kind under the issues of this complaint. Therefore it will be seen that the Examiner's Report satisfies completely the two grounds upon which these carriers intervention were based. Since their intervention is satisfied in all respects by the Examiner's findings, we wonder why they thought it necessary to make this statement of their position in the nature of an exception.

These petitioning railroads oppose the maintenance of the Atlantic Coast Line Florida Intrastate rates and mention this in their exceptions. The complaint filed by the Georgia Commission does not assail the Florida intrastate rates as being unreasonably low. This issue is not in the proceeding and the petition of these interveners cannot so broaden the issues as to bring this in question. No one here has asked the Interstate Commerce Commission to [fol. 1019] fix minimum reasonable rates on Florida Intrastate traffic. On this, the Commission could not entertain such an issue standing by itself. It could arise only in connection with the Section 13 allegation. If these interveners find fault with the measure of the Florida intrastate rate, their remedy must be sought through the Florida Railroad Commission and not through the Interstate Commerce Commission.

The concluding paragraph under their heading number one, found on page 3 of their exceptions, is a mere summary of the evidence which they introduced. They do not ask that any additional facts be stated in the report, and do not call to attention any errors or omissions in the report,

erefore, this cannot be regarded as an exception. It is a ere statement in lieu of their failure to file a brief.

2. Intervening Defendants Exceptions Roman Numerals vo, pages 4, 5, 6 and 7, bring forth only one exception to e language of the Examiner's Report. They object to the ding that the revenue from the Florida Intrastate Log affic, while relatively low, is "reasonobly compensatory." terveners ask that this finding be eliminated from the eport. Particular attention is called to this significant fact at the elimination of these two words is the only exception which the interveners make to the facts or findings of e Examiner's Report.

The Jacksonville Traffic Bureau respectfully submits that ere is conclusive evidence of record in support of the xaminer's finding that the Florida rates are reasonably mpensatory. This evidence is set forth at length in briefs Florida interests, particularly the brief of the Railroad ommission of Florida, which is hereby referred to and eed not be repeated. We shall merely recall the fact that aborate cost figures were submitted by the sole defendant this case, and that these cost figures were broken down, nalyzed and reconstructed by Witness, Pettijohn, Expert ccountant for the Florida Railroad Commission. Mr. ol. 1020] Pettijohn's figures show conclusively that the venue under the Florida log scale yields a substantial argin over and above the cost of this service. Even the oast Line cost studies show a margin of $1.34 over the timated costs and Mr. Pettijohn's figures show a margin $5.85 over and above the cost of service.

It is true that these cost studies relate primarily to train ad movements as stated by intervening carriers on page paragraph number 3, of their exceptions. The cost figres were based upon train load movements because the ovement to Jacksonville is the most important movement traffic within Florida, which is involved in this case. The eorgia Commission has predicated the issue of discrimation upon a hypothetical movement in the future from orth Florida tracts of timber on Atlantic Coast Line to eorgia mills on the one hand as compared with rates from e same tracts of timber in North Florida to Jacksonville the other. Therefore, all of these cost figures are based on the most important actual movement involved in this

case, which was the only proper thing to do. The movement in single car lots between other points in the State certainly cannot be regarded as an important factor in this case. There is no evidence whatsoever to show what the volume of the movement of the single car lots is on the line of the Defendant, Atlantic Coast Line, or any other line. Therefore, it would have been illogical to attempt to estimate the cost of movement in single car lots. Evidently this is what the Examiner had in mind when he referred to the movement to Jacksonville as the important movement, and when he referred to the movement in single car loads as being unimportant.

The intervening lumber and shipping interests of Florida respectfully submit that the Examiner's finding in respect to the compensatory feature of these rates is amply supported by the record and that there is no merit in the intervening carriers' request for the elimination of this finding from the report.

[fol. 1021] Attention is called here to the fact that the real defendant in this case has tacitly accepted this finding of the Examiner as correct, and having done so it is inconceivable that an intervening carrier on behalf of that defendant could take exceptions to a finding which the real defendant has accepted as being founded in fact.

The Commission's attention is especially directed to the fact that this exception is taken without the interveners' having knowledge of the actual cost of this service over the line of the Atlantic Coast Line, and without attempting to disapprove the cost figures introduced either by the Atlantic Coast Line or the Florida Railroad Commission's Expert Accountant. This single exception which these intervening carriers have taken would have only a remote bearing upon the disposition of this case, even if it had merit. As stated hereinbefore, no one has asked the Interstate Commerce Commission to prescribe minimum rates on Florida Intrastate traffic. There is no issue here which would make it necessary for the defendant or interveners in their behalf to prove that the Florida rates do not cast a burden upon other traffic. The fact that they held their rate over and above the cost of the service is sufficient proof upon that point even if it were brought in issue.

On page 7, the intervening carriers state that there is a very substantial movement in single car lots, etc. As stated hereinbefore, this intervener questions the accuracy of this statement and challenges these interveners to show any evidence in the record in support of the statement that there is a substantial movement in single car lots.

A statement was made that there are movements in less than train loads, but this record can be searched in vain for any evidence to bear out the statement that there is a very substantial movement in single car lots.

On page 108 of the Record, the Seaboard Witness, when questioned as to whether the logs move in solid trains or in separate carloads, answered that he would prefer that the Coast Line Witness testify as to that.

[fols. 1022 & 1023] The intervening carriers state that the Florida Railroad Commission condemns the defendant's log rates and refers to them as being confiscatory. We emphatically deny this statement. Explanation of similar statements made by Chairman Perry, has been made in the forepart of this reply. Here it is only necessary to point out that the Florida Commission did not make such a finding but after mature consideration approved the rates. In this connection reference is directed to a statement of the Chairman of the Florida Railroad Commission beginning on page 3 of the brief filed by the Florida Railroad Commission in this case.

Pages 89, 90, 96 and 142 of the record set forth the object of the railroad interveners in taking part in this proceeding. These intervening carriers, in stating the object of their intervention testified that it would be detrimental to their interests to have the Commission prescribe an unduly low level of rates interstate from Florida into Georgia via the Atlantic Coast Line. That this was the sole purpose of the intervention of these carriers clearly appears from their own statements in the record and we therefore submit that the only interest of the intervening carriers in the log rate applicable over the Atlantic Coast Line in Florida is that it be not extended to their lines.

This intervener having fully answered the exceptions filed by the Georgia Public Service Commission and the intervening railroads, respectfully submits to your Honor-

able Commission that neither one of these exceptions has in a single instance, successfully opposed a single statement or finding in the Examiner's proposed report.

Respectfully submitted.

Jacksonville Traffic Bureau, E. C. Green, Manager.
J. O. Cassidy, Attorney for Intervener.

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[fol. 1024] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

EXCEPTIONS TO EXAMINER'S PROPOSED REPORT, FILED ON BEHALF OF SEABOARD AIR LINE RAILWAY COMPANY, CENTRAL OF GEORGIA RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, AND GEORGIA, SOUTHERN & FLORIDA RAILWAY COMPANY, INTERVENERS.

Come now the Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia, Southern & Florida Railway Company, interveners, and for their exceptions to the report proposed herein by Examiner R. M. Brown respectfully [fol. 1025] say as follows:

I

In the intervening petition filed on behalf of these carriers, the grounds of the proposed intervention and the nature and extent of the petitioners' interest in the proceeding were set forth as follows:

"1. Petitioners are common carriers by railroad and as such are engaged, according as their respective lines are located, in the transportation of logs in interstate commerce between points in the State of Florida, on the one hand, and point in the State of Georgia, on the other, as well as in the intrastate transportation of such traffic within the States of Georgia and Florida, respectively, and, as such common carriers, petitioners have an interest in the general level of the rates, both interstate and intrastate, in said territories including such rates as may be established, or may be required to be established, by the Atlan-

tic Coast Line Railroad Company, defendant in this case, for application over the lines of said company:

"2. That petitioners have been and are opposed to the establishment and maintenance by said Atlantic Coast Line Railroad Company of the rates now maintained by it for intrastate application on logs within the State of Florida, and consider these rates to be unduly and unreasonably low [fol. 1026] and detrimental to the interests of these petitioners; and that petitioners are opposed to the continuance of the said intrastate rates in Florida or to the adoption of these rates for interstate application between points in Florida and points in Georgia, via the lines of the Atlantic Coast Line Railroad Company or otherwise, and whether for the purpose of establishing reasonable maximum rates under Section 1 of the Act, or for the purpose of removing undue discrimination as complained of in the complaint filed in this proceeding."

At the hearing evidence was offered on behalf of these interveners, showing that they respectively operate in the same general territory that is served by the lines of the defendant, the Atlantic Coast Line Railroad Company; that upon their respective lines of railroad in this territory each of these interveners now publishes and maintains scales of rates on logs in carloads for interstate and intrastate application, respectively, including intrastate rates within the State of Florida as well as in such other states as Alabama and Georgia, and interstate rates between Georgia, Florida and other states, which scales of rates, both state and interstate, are invariably on a higher level than the present intrastate rates of the Atlantic Coast Line Railroad Company in Florida; and that the rates so maintained by these interveners are reasonably low (witness Abrams, Potter and Chancellor; Exs. Nos. 2 to 8, inc., Tr. pp. 88, et seq.)

II

[fol. 1027] In the report, after referring to certain cost studies relating to the present intrastate log rates in Florida of the defendant, Atlantic Coast Line Railroad Company, the examiner finds and states in reference to these rates:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant

from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce'' (sheet 9).

The interveners take exception particularly to the foregoing finding that the revenue received by defendant from its Florida intrastate log traffic is ''reasonably compensatory.'' They submit that this proposed finding is unsustained by the evidence, and that if it should be adopted and announced by the Commission such finding would be seriously prejudicial to the interests of these interveners, as well as all other carriers that are engaged in the transportation of logs in the territory herein involved. In support of this position the Commission's attention is respectively directed to the following:

1. For interstate application by the defendant from points in Florida to destinations on its lines in Georgia, the examiner finds that defendant's proposed scale (as shown on sheet 15) will constitute a reasonable maximum scale for the future. The examiner further correctly finds [fol. 1028] that the interstate scale thus approved is the same scale that is now in effect intrastate in Alabama, and that the rates are the same, or substantially the same, as those of which the reasonableness has been approved by this Commission in Pierpont Mfg. Co. v. S. R. Co., 50 I. C. C. 81; Southern Veneer Asso. v. A. C. L., R. Co., 62 I. C. C. 669; and Southern Cotton Oil Co. v. A. C. L. R. Co., 120 I. C. C. 190. On sheet 6 of the reprt are shown the present intrastate log rates maintained by the Atlantic Coast Line in Florida, which rates were originally established and have since been continued by that carrier for the reasons and under the circumstances that were explained on its behalf in this proceeding. It will be observed that for a haul of 150 miles in Florida, the rate under this scale is 3.4 cents per 100 pounds, and the revenue accruing on a car of 50,000 pounds would be only $17. This rate, which the examiner finds to yield ''reasonably compensatory'' revenue, is less than half of the interstate rate of 7.5 cents which the examiner finds, on the other hand, to be not unreasonable for an interstate haul of 150 miles from Georgia into Florida. In other words, the interstate rate, which

is correctly found to be not unreasonable, is about 120 per cent higher than the rate which the examiner finds to be "reasonably compensatory" for defendant's intrastate movement for the same distance in Florida. It is in evidence, moreover, that the defendant's present rates on logs in Florida for distances up to 170 miles, which are based upon the so-called "Cummer Scale," are far below the [fol. 1029] rates for distances beyond 170 miles, these latter being the Class P rates as fixed by the Florida Commission; and further, that for a distance of, say, 50 miles these intrastate rates on logs in Florida yield per car revenue equivalent to less than one-half of the revenue for a similar haul under defendant's present interstate rates on logs; about one-third of the revenue on a similar movement of brick; considerably less than one-third of the revenue on either sand, gravel or lime; and less than one-fifth of the present revenue under the interstate rates on cement.

2. On sheet 8 of the report, it is pointed out that the cost study submitted by defendant indicated "a margin of $1.34 per car over the estimated cost of service." It is further stated that:

"Defendant stresses the point that its study covers trainload movements only, and that if the haul were in less than trainloads the cost of service would be higher. Most of the Florida intrastate log traffic is in trainloads. The less-than-trainload movement is unimportant."

The examiner is correct in stating that the cost study submitted by the defendant related to movements in train load quantities only. It will be observed, however, that although the rates were originally contemplated for application on trainload movements only, they were in fact made applicable on all movements whether in trainloads or in single carlots, for the reasons mentioned on sheet 4 of the report. The rates, therefore, are applied at the present time on single cars as well as on trainloads. It is obvious, [fols. 1030 & 1031] therefore, that the cost studies referred to do not in any way indicate the cost of handling single carlots, and that upon the basis of this cost there would be a reduction, if not a complete elimination, of even the small margin of $1.34 per car as mentioned in the report. There appears to be no support in the record for the finding that:

"Most of the Florida intrastate log traffic is in trainloads. The less-than-train-load movement is unimportant." On the contrary, there is a very substantial movement in single carlots and less than trainload quantities over the lines of the defendant, as well as other carriers in Florida.

3. The record shows, moreover, that when defendant's log rates were established these rates were strongly condemned by the Railroad Commission of Florida, upon the ground that they were unduly and unreasonably low; and further, that in the view of the Railroad Commission, as expressed at that time, "the rates carried in this tariff are such as might be deemed confiscatory."

For the foregoing reasons these intervenors protest against any finding that rates of the sort thus described are "reasonably compensatory," and respectfully urge that the findings in the proposed report in this respect should be eliminated.

Respectfully submitted,
Henry Thurtell, Charles J. Rixey, Attorneys for Interveners as of Record.

August 31, 1927.

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[fol. 1032] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Georgia Public Service Commission

EXCEPTIONS TO PROPOSED REPORT OF EXAMINER R. M. BROWN

1. The Georgia Public Service Commission, complainant in this case, represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation.

2. It is alleged, and the record in this case shows, that the interstate rates on logs charged by the Atlantic Coast Line Railroad from points in Florida to points in Georgia are unreasonably high as compared with the rates charged by the Atlantic Coast Line Railroad for handling logs

intrastate between points in Florida, to the extent that the Georgia manufacturer is prevented from purchasing logs in Florida, the difference in the rates being too great for the Georgia man to absorb against his Florida competitor.

3. The complaint of the Georgia Public Service Commission is not an attack on any rates which have been fixed or required by the Railroad Commission of Florida. The rates being charged by the Atlantic Coast Line Railroad in Florida being voluntarily established by that line and its predecessors, and were condemned by the Florida Railroad Commission, but continued in force voluntarily by the Atlantic Coast Line Railroad.

[fol. 1033] 4. After this complaint was filed, the Georgia-Florida Sawmill Association, now Southeastern Forest Products Association, among other Florida interests, intervened, but the Georgia-Florida Sawmill Association failing to comply with the rules of your Commission by showing clearly its interest in the matter, the complainant, Georgia Public Service Commission, requested your Honorable Commission to have your rules complied with. Your Chief Examiner called on the Georgia-Florida Sawmill Association to comply with the rules, but this was never accomplished. Attention is directed to this for the reason that the name of this organization (Georgia-Florida Sawmill Association) would indicate that it represented Georgia shippers, and further to the fact that the Examiner, in referring in his report to evidence submitted by witness for the Georgia-Florida Sawmill Association, appears to be under the impression that the Georgia-Florida Sawmill Association represented Georgia shippers that were opposed to the complaint, which is not the fact, as no Georgia lumber manufacturer testified on behalf of the Georgia-Florida Sawmill Association in opposition to this complaint.

5. At sheet 7 of the Examiner's report, the Examiner states: "Complaintant's evidence was mainly in support of its allegations under Sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the

Florida rates were found just and reasonable they should be made to apply on log traffic between Florida and Georgia."

The Georgia Commission is not familiar with any rule of your Honorable Commission or any law that requires the complainant to suggest or say to your Commission what rates you should use to remove discriminations. While we know that such evidence is often submitted, and sometimes [fol. 1034] may be desirable, but in this case the Georgia Public Service Commission is asking that the Georgia shipper be placed on an equality with his competitor in Florida by being permitted, thru equal rates, to draw his raw materials from Florida, and certainly we do not feel that the Examiner is justified in recommending the dismissal of the complaint, for the reason that the complainant failed to suggest to him what rates he should recommend to your Honorable Commission.

6. Again at sheet 7, the Examiner makes reference to evidence submitted by the complainant of comparisons between the Florida rates and the interstate rates for the purpose of showing undue prejudice of log shippers located at Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Georgia, and undue preference of Florida shippers located at certain selected Florida points, and further states that the comparisons were designed to show merely the rate advantage of the Florida shipper over those located in Georgia. The conclusion of the Examiner in this respect is absolutely correct, and this was testified to by complainant's witness at the time the exhibit was submitted, but the Examiner also states: "No movement under the interstate rates was shown, and complainant admits that there is none." This last statement explains fully the very reason that this complaint was brought, as testimony of witness for the Georgia Public Service Commission, beginning at page 10 of the record, shows that already the State of Georgia has lost some manufacturing interests to the State of Florida, and other manufacturers located in Georgia on the border of Florida were then negotiating with the view of moving their industries to Florida, on account of this rate situation. Witness Giddens, located at Valdosta, Georgia (Page 374 to 423), and Witness Davies, of Climax, Georgia (Page 424 to 450),

and Witness Jackson and Simmons, all testified to the effect that they were not shipping any logs from Florida to Georgia, but had attempted to make purchases in Florida and were prevented from doing so on account of the unrea- [fol. 1035] sonably high rate interstate, as compared with the intrastate rates in Florida, making it possible for the Florida manufacturer to pay a higher price for these logs than the Georgia manufacturer could afford to pay and absorb the difference in freight rates. The law is very clear that when the disparity in rates is so great as to prevent the free movement of interstate commerce, that it works a discrimination and should be removed, and that is all the complainants are asking in this case.

The Examiner calls attention to the fact that there are sixty-four sawmills located on the Atlantic Coast Line in Georgia within 170 miles of Florida, "but few of the owners of these mills testified in support of the complaint," leaving the inference that he was not impressed with the evidence submitted by such Georgia shippers as did testify, and that of the Georgia Public Service Commission, who represented all Georgia shippers. In other words, he might have been impressed if the complainant had brought into the hearing each of the operators of these sixty-four mills. At sheet 8, referring to testimony of the Georgia shippers, the Examiner says: "Their testimony indicates that they are interested primarily in the reduction of the interstate rates rather than in the relationship between the Florida rates and the interstate rates. All but one admitted that an increase in the Florida rates would not benefit them, and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates." We are unable to find in the record justification for the first part of this statement, for the reason that the purpose of the complaint is to bring about proper relationship between the inter and intrastate rates. However, the Examiner is correct, and the record so shows, that the present interstate rate is too high, and cannot be used, and this is *ad-* admitted by the defendant in submitting a schedule of rates as a compromise which is lower than the present interstate rates, and the rates submitted by the defendant have been recommended by the Examiner.

[fol. 1036] 8. At sheet 8, the Examiner makes reference to testimony of the Georgia shippers to the effect that they stated in general terms that there is available timber in Florida which could be economically purchased and transported over defendant's line to their mills in Georgia if reasonable interstate rates were published, but the location or quantity of such timber was not revealed. At the hearing at Valdosta, Witness Jackson, representing the Jackson Brothers Lumber Company, Valdosta, Georgia, testified (Page 60 to 70) that at the time of the hearing he was negotiating for a tract of 190,000,000 ft. of logs in Florida, but could not make the purchase under the existing rate adjustment. That is, he would be unable to pay the price for this timber and absorb the difference in the inter and intrastate rate that could be paid by the Florida manufacturer, the difference in the rate representing a reasonable profit. Witness Jackson, in his testimony, gave the exact location of this timber, but before the hearing at Jacksonville the timber had been purchased by Florida interests. It is not our purpose in making this statement to charge that any of the Florida interests parties to this case took advantage of this testimony to purchase this timber against Mr. Jackson, but the fact remains that Mr. Jackson lost the timber, and for this reason the Georgia witnesses testifying at the Jacksonville hearing declined to give the location or quantity, or any other information that would reveal the location of the timber which they desired to purchase. After the experience of Witness Jackson, the other Georgia manufacturers should not be criticized, or their testimony disregarded, for their failure to reveal the location of their proposed purchases.

9. At sheet 8, the Examiner says: "Most of the Florida intrastate log traffic is in train loads. The less than train load movement is unimportant." The Examiner has evidently overlooked the testimony of Witness Perrin, for the Atlantic Coast Line Railroad, at page 238, where he testified that there is a movement in single car lots, and that the movement of logs under this Florida intrastate [fol. 1037] scale is not confined to Jacksonville or Perry, or any other point. This, of course, is obvious for the reason that this Florida scale applies up to a distance of

170 miles between all points on the Atlantic Coast Line Railroad in Florida. There are many mills located on the Atlantic Coast Line Railroad in the peninsula or South Florida who have the benefit of this scale, and do not receive their logs in train lots. It is extremely doubtful if there is any movement of logs anywhere in Florida over the Atlantic Coast Line for distances more than 170 miles, in which event it must be conceded that the maximum revenue derived from log traffic by the Atlantic Coast Line in Florida is on this Florida intrastate scale. The less than train load movement is not unimportant, and certainly is just as important to the Georgia manufacturer who desires to purchase logs in Florida as it is to the Florida manufacturer who is to-day purchasing logs and receiving them in less than train load lots, and receiving the benefit of the Florida intrastate rate. The Examiner, at sheet 2, states: "While complainant states that the object of its complaint is to secure reasonable rates on logs from all points on defendant's railroad in Florida to all destinations on that line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs from points in that portion of Florida lying north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Florida," and at sheet 10, in dealing with the rates proposed by defendant, the Examiner states: "The complaint does not attack the South Florida rates. It is therefore unnecessary for the Commission to indicate its approval or disapproval of such rates at this time. The Examiner has evidently overlooked the testimony of witness for the Georgia Public Service Commission at page 35 of the record, where he stated that "the complaint of the Georgia Commission is not confined to any particular manufacturing point in Florida, but Jacksonville and Perry were only used to illustrate the conditions as they exist. The Florida intrastate rates involved in this case apply between [fol. 1038] any two points in Florida located on the Atlantic Coast Line Railroad for any distance up to 170 miles. Therefore, such points as Tampa, Lakeland, or any other manufacturing point in Florida on the Atlantic Coast Line can use these Florida rates for a distance of 170 miles," and we insist most emphatically that, in considering the complaint of the Georgia Public Service Commission

in this case, it is necessary for your Honorable Commission to give consideration to the intrastate rates in South Florida. As the record shows, this Florida scale only extends for a distance of 170 miles, and therefore it would not have been proper for the complainant to have prepared exhibits making comparisons for distances in excess of 170 miles. It so happens that in so far as Georgia is concerned, it would confine the territory to what the Examiner terms "North Florida." However, a glance at the distance table of the Atlantic Coast Line Railroad will show at once that the mills in North Florida may draw logs from South Florida for a distance of 170 miles, in fact, as previously stated, it is doubtful if there is any movement of logs between any points in Florida over the Atlantic Coast Line Railroad that do not receive the benefit of this Florida intrastate scale. The discrimination complained of here, as the record shows, is not confined to Jacksonville or any other point in Florida.

10. At sheet 10, the Examiner says: "Several rate exhibits were submitted by complainants for the purpose of showing that the proposed interstate rates are unreasonably high when compared with defendant's intrastate log rates in various of the Southeastern States; with the average of such intrastate rates, including the Alabama scale; and with the combined average of defendant's intrastate and interstate log rates applicable in the Southeast. Complainant's showing is not persuasive of the unreasonableness of the proposed rates. None of the intrastate rates were voluntarily established except those in Florida." As explained by the witness for the Georgia Public Service Commission, in submitting exhibits referred to here by the [fol. 1039] Examiner, it was with the purpose of giving to your honorable Commission a complete picture of the log rates operated by the Atlantic Coast Line Railroad, both inter and intrastate, but the exhibit, we regret, did not apparently impress the Examiner for the reason as he states: "None of the intrastate rates were voluntarily established except those in Florida." We hesitate to express the thought that the Examiner or your Honorable Commission does not look upon rates prescribed by State authorities in any instance as being just and reasonable rates, and should not be given consideration when submitted for the

purpose of comparison, as in case. The one exception noted by the Examiner of voluntarily established rates are the rates in Florida, which are the lowest rates shown on the exhibit, and in fact the lowest rates on logs we were able to locate being operated by the Atlantic Coast Line Railroad on any part of its line. The Examiner says: "Transportation conditions under the intrastate rates are not shown to be similar to those existing interstate between Florida and Georgia." We may also say that it was not shown that the transportation conditions under the intrastate rates were dissimilar to those existing interstate between Florida and Georgia, except as to some of the movement intrastate in Florida, but the record does show that Witness Perrin for the Atlantic Coast Line testified that the preponderance of the log movement on the Atlantic Coast Line Railroad was intrastate. This being true, then it would seem reasonable that the intrastate rates which move the preponderance of the traffic should be given most thorough consideration.

11. At sheet 11, in discussing evidence submitted by the Georgia Public Service Commision, the Examiner says: "The force of the comparisons is lessened by the incluison in the averages of the Florida-Georgia interstate rates, which defendant proposes to reduce, and by the conclusion of the Florida rates, which are shown to be on a low basis." This statement of the Examiner is not understood. [fol. 1040] Certainly, if the exhibit purported to include all scales of rates on logs operated by the Atlantic Coast Line Railroad, it would not have been complete if the Florida-Georgia interstate rates or the Florida rates had been excluded, and instead of the inclusion of these rates lessening the force of the comparisons, it may well be said that the force of the comparisons would have been lessened by the exclusion of any of the schedules, otherwise your Commission would not have had a complete picture of the log rate situation on defendant's lines.

12. At sheet 11, the Examiner makes reference to an order issued by the Georgia Public Service Commission in 1925 that was later rescinded, and states that: "Complainant's Rate Expert admitted that the higher rates thus prescribed, at that time, were on a reasonably low basis."

The Examiner had reference to the testimony of the witness for the Georgia Public Service Commission at page 39, as follows: "Q: And we are entitled to believe that based on that testimony, and their best information, the scale of rates which the Georgia Commission required the railroads to establish represented its best judgment as to reasonable rates? A: At the time, yes sir." We are unable to find in the record wherethe Rate Expert of the Georgia Commission testified that these Georgia rates which have been cancelled were on a "reasonably low basis." All rates prescribed by the Georgia Commission are maximum rates, and as testified to by the witness for the Georgia Commission, the order referred to by the Examiner was rescinded when this Florida situation was brought to the attention of the Georgia Commission, and there is nothing in this record to indicate that it is the opinion of the Georgia Commision that the rates which have been cancelled are at this time reasonable maximum rates.

13. Beginning at sheet 11, the Examiner discusses the evidence submitted for the Florida intervenors to the effect that any material increase in the Florida rates will either [fol. 1041] cause them to move their plants to the timber or abandon operations, and that in either event the defendant would lose considerable log traffic, the extent of which cannot be readily estimated, and expresses doubt that if the Florida rates were increased that it would compensate the Atlantic Coast Line for the loss of such traffic. The Georgia Public Service Commission submits that the people of Georgia should not be penalized in favor of manufacturers in Florida simply because there is a possibility of the Atlantic Coast Line losing some traffic under a proper rate adjustment. That is not the question involved in this proceeding, but the question is, what is a reasonable rate on logs between points in Florida, and between points in Florida and points in Georgia, and why should not the Georgia manufacturer be placed on an equality with his Florida competitor. It is unreasonable to say that the manufacturer in Georgia, if he chooses to purchase logs in Florida, should pay an unreasonable rate for the transportation of same in order that his competitor in Florida may enjoy a lower rate under the apprehension that any change

in the Florida rates would cause loss of business to the carrier. The complainant in this case is not insisting on any change in the Florida rate, but is insisting that the same rate that is made applicable intrastate in Florida also be required between Florida and Georgia.

14. At sheet 12, the Examiner, commenting upon evidence submitted by the Florida intervenors, makes reference to the tremendous cost to the Brooks-Scanlon Corporation to make its plant from Eastport, Florida, it being contended by this intervenor that any change in the present Florida rate will cause them to move their operations from Eastport back into the timber. The record shows that the cost of constructing the present mill properties was approximately $2,500,000, and as stated by the Examiner, it will cost between three and four million dollars to move the plant. In other words, it will cost them more to move the plant than to build new plants. We submit that whatever [fol. 1042] the cost may be, if any, has no bearing or relevancy to the reasonableness of the freight rate on logs between points in Florida, or interstate from Florida to Georgia. Should the Commission attempt to consider the cost of constructing a lumber mill as a factor in arriving at the reasonableness of a rate, it would have before it an unending task, for there is certainly no relationship between the cost of constructing a lumber mill and the cost to the carrier for transporting a car of freight. If such evidence is to be considered as relevant, then of course it follows that the greater the cost for constructing the mill the lower the rate, and therefore the ordinary mill man would have to pay the higher rate and be forced out of business, which as a matter of fact is what is taking place with the Georgia manufacturer vs. the Florida manufacturer, and the very cause of this complaint.

At sheet 12, the Examiner discusses further the testimony of the Florida interveners, making reference to their testimony to the effect that there is no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills, and their contention that it will be impracticable to ship logs to Georgia under defendant's present interstate rates, or even under rates as low as those of the Cummer scale. The proposed findings of the Exam-

iner would indicate that he has accepted this testimony and disregarded entirely the testimony of Witnesses Giddens, Jackson, Davies, and Simmons, who are Georgia lumber manufacturers, and testified in the strongest terms they were in position and were anxious to purchase logs in Florida, were then negotiating for certain tracts of timber, but were unable to close these negotiations on account of the rate situation here complained of. The Georgia manufacturer frankly admits, and that is a part of this complaint, that it is impracticable to ship logs from Florida to Georgia under the present interstate rates, but these Georgia witnesses stated clearly that if they were accorded the rates now in effect in Florida they could and would ship logs from [fol. 1043] Florida to Georgia, and further that if the interstate rate and the Florida intrastate rate were made the same on anything like a reasonable level to permit them to compete with the Florida man in the purchase of these logs, they would be able to and would ship logs from Florida to Georgia. Should the Examiner be correct in his conclusion that there would probably be no movement from Florida to Georgia under the Cummer scale, and his further conclusion that the revenue received by the Atlantic Coast Line from its Florida intrastate log traffic is reasonably compensatory, then we are at a loss to understand why he failed to recommend that the Florida intrastate rate be extended for interstate application from Florida to Georgia. We submit that should this be done, and if there is no movement there would be no loss in revenue to the Atlantic Coast Line Railroad, and no violence would have been done to the interests of these Florida intervenors. However, on the other hand, if the testimony of the Georgia shipper is accepted at its face value, and we believe it should, the revenues of the Atlantic Coast Line Railroad would be increased for the reason there is not and cannot be any movement under the present rates.

16. At sheet 12, the Examiner makes reference to the outbound movement by water under relatively low rates. The outbound rates on lumber are not involved in this complaint in any way whatever, and we will therefore not discuss this feature.

17 At page 14, the Examiner says: Testimony for complainant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking." Here, again, it is evident that the Examiner has failed to give serious consideration to the evidence and testimony submitter by the Georgia Public Service Commission, and by Georgia lumber manufacturers who testified in support of the complainant, [fol. 1044] the Georgia Public Service Commission. The rate exhibits submitted by the witness for the Georgia Public Service Commission were for the purpose of showing the handicap the Florida manufacturer had over the Georgia manufacturer, and this evidence was fully supported by the uncontradicted testimony of lumber manufacturers at Valdosta, and other places in Georgia, to the effect that it was impracticable for them to ship logs from Florida to Georgia under this handicap. We submit that the testimony of a manufacturer in Georgia, altho his output of timber may not amount to more than 100,000 feet per day, is entitled to just as much consideration as the testimony of a Florida manufacturer whose output is a million feet of timber per day, and that the smaller manufacturer is entitled to the same reasonable level of rates as the larger competitor. It is, of course, unfortunate that all of the lumber manufacturers are not in the larger class, but this should not bar them from consideration in a complaint of this character.

18. At sheet 13, the Examiner quotes in part the decision of the Supreme Court in Wisconsin Railroad Commission vs. C. B. & Q. Railroad Company, 257 U. S. 563, which was submitted by the Florida intervenors in justification of their contention that your Commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden on interstate commerce, viz:

"It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of in-

trastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce."

[fol. 1045] We are thoroughly in accord with the above quotation, and direct particular attention to the wording "Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination abainst, and obstruction to, interstate commerce." If the disparity in the intrastate rates in Florida and the interstate rates from Florida to Georgia involved in this complaint is not substantial, then in our opinion there is no such thing as substantial disparity. Exhibit No. 1 of complaint shows that the interstate rates are in some instances as much as 200% higher than the Florida intrastate rates. The sworn testimony of Georgia manufacturers is that these rates are preventing them from shipping logs from Florida to Georgia, and certainly this can only be construed as an obstruction to interstate commerce.

19. At sheet 13, the Examiner quotes, in part, the decision of your Honorable Commission in Hunter Bros. Mercantile Co. vs. American Railway Express Co., 107 I. C. C. 313:

"Before we can require a change in the intrastate rate * * * it must appear that the intrastate rate injuriously affects interstate commerce in violation of the interstate commerce act. In some cases intrastate rates affect interstate commerce in ways so manifestly injurious as to make them subject to our control. In other cases the relation of an intrastate rate to movement of interstate commerce is so remote and insignificant that it may properly be disregarded. The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The Georgia Commission is thoroughly in accord with the above statement quoted from your decision, but submit that the purport of this quotation does not apply to the instant case. We repeat again that the rate exhibits filed by

[fol. 1046] the Georgia Public Service Commission, and supported by the lumber manufacturers of Georgia by uncontradicted testimony, show clearly that the intrastate rate in Florida does affect interstate commerce injuriously to a material extent. If the effect of a rate is such as to cause manufacturers to leave one state and go to another, and is causing other manufacturers located on the borderline of the state heavy financial loss, as was proven in this case, then it must follow that it is injurious "to a material extent." Such is the overwhelming evidence in this case.

20. The rates proposed by the Examiner for interstate application from Florida to Georgia, and his recommendation that no findings be made against the Florida intrastate rates, does not relieve the complaint. The evidence in this record proves absolutely there should be no difference between the interstate rates from Florida to Georgia and the intrastate rates between points in Florida over the Atlantic Coast Line Railroad for a distance of 170 miles. Witnesses for the Georgia manufacturers testified that the rates proposed by the Atlantic Coast Line, which are also proposed by the Examiner, are entirely too high. The Examiner, at sheet 9, in discussing evidence submitted by the Atlantic Coast Line Railroad and the Florida Commission as to the probable cost of transportation, says: "Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce." We again insist there is a large movement of logs between points in Florida not covered by these approximate cost studies submitted by the Atlantic Coast Line and the Florida Commission, and no evidence has been submitted showing there is any difference in the transportation conditions in the movement of logs from Florida to Georgia, as compared with the intra-[fols. 1047 & 1048] state movement in Florida (except as to the Jacksonville situation).

Wherefore, complainant files the foregoing, setting out its various exceptions to the Examiner's Report as here-

inabove specified and complained of. Complainant especially calls attention to each of its exceptions wherein it is shown that the Examiner has misconceived complainants position, and has erred in summing up the evidence in the case; and has accordingly reached erroneous conclusions and made erroneous recommendations, such as are not supported by the evidence in the case.

Complainant most earnestly and respectfully urges that the manufacturers in Georgia be afforded the relief here prayed for, by requiring the same measure of rates on interstate traffic as on intrastate traffic between points in Florida.

Respectfully submitted,

By Jas. A. Perry, Chairman. E. M. Price, Rate Expert.

Atlanta, Georgia, August 31st, 1927. File 16197.

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[fol. 1049] BEFORE INTERSTATE COMMERCE COMMISSION

REPLY OF THE FLORIDA RAILROAD COMMISSION TO EXCEPTIONS TO TENTATIVE REPORT OF EXAMINER R. M. BROWN.

The Florida Railroad Commission would not reply to the exceptions in this case if it were not for the fact that both in the exceptions filed by the Georgia Public Service Commission and in those filed by the intervening railroads in behalf of the defendant, a mis-statement has been made to the effect that the Florida Railroad Commission has condemned the log rates maintained by the Atlantic Coast Line Railroad for intrastate movement within Florida.

On page 2, of the exceptions filed by the Georgia Commission, the following is stated: "The rates being charged by the Atlantic Coast Line Railroad in Florida being voluntarily established by that line, and its predecessors, and [fol. 1050] were condemned by the Florida Railroad Commission." Also on page 7, of exceptions filed by the intervening railroads in behalf of the defendant, we find the following: "The record shows, moreover, that when defendant's log rates were established, these rates were

strongly condemned by the Railroad Commission of Florida, upon the ground that they were unduly and unreasonably low." And further, that in the view of the Railroad Commission, as expressed at that time, "The rates carried in this tariff are such as might be deemed confiscatory."

The Florida Commission does not wish to impugn the motives either of the Georgia Commission or the intervening carriers who filed exceptions in this case. But it is at a loss to understand how those parties can reiterate these statements which were made at the hearings, in face of the fact that the entire Florida Commission attended both the Valdosta hearing and the Jacksonville hearing, in a body, and speaking through its chairman emphatically denied that it had condemned these rates.

The Chairman went very fully into an explanation of the Florida Commission's position regarding the Cummer scale of log rates, applicable over the Atlantic Coast Line Railroad. Quoting from Chairman Wells' testimony at page 658—"When this case was first brought by the Georgia Public Service Commission, the Florida Commission, of course, was very much chagrined at the fact that a sister State would bring a case against a Florida rate or a sister State rate, and it was not the purpose of the Commis- [fol. 1051] sion to take any part in the proceedings or offer any testimony, although we put in an appearance at Valdosta. But when the Coast Line put into evidence a letter that was written in 1914, by our Rate Expert, and one also from the Chairman of the Commission, the Commission then thought it was up to them to make an investigation, which they have done." Quoting again from Chairman Wells' statement on page 669 of the record: "When that letter was written, they had not gone into the cost study; they were only assuming I presume, that it would not be compensatory, because just not long before that they had adopted what is known as Class 'P' rates, and logs were being hauled under this class. This particular Cummer rate was quite a good deal lower than Class 'P' rates. Therefore, without going into the matter or making a cost study themselves, they felt that it would not be remunerative, and thought that other traffic would have to bear a part of the burden." Quoting further from his statement on page 670 of the record, and referring to the letter written concerning

these log rates, he said: "Now that has been in operation since 1914 up until the present time, and the Atlantic Coast Line Railroad, I say, I know, for the last six years, have not applied to the Railroad Commission for a change in the Cummer log rate scale. Therefore, the Commission feels after this investigation which they will put their witness on the stand concerning, the way that it is handled in Florida, that it is remunerative to them."

[fol. 1052] Quoting from the brief filed by the Florida Railroad Commission in this case, and referring to the statement of Chairman Wells, that Commission says: "As will be noted from the statement of the Chairman, it is not the purpose of the Florida Railroad Commission that the Cummer scale of log rates is proper or desirable, as a measure of the interstate log rates between Florida and Georgia. But this Commission does, unqualifiedly, take the position that these rates, as applied in Florida, and over which it has jurisdiction, have its full approval."

The foregoing references to the position of the Florida Railroad Commission and to the opinion of the Florida Railroad Commission concerning the reasonableness and remunerativeness of the Cummer scale of log rates would seem sufficient to refute the statements made in the exceptions filed by the Georgia Commission and railroad interveners in behalf of the defendant that the Florida Commission had condemned them.

This Commission wishes to say again to the Honorable Interstate Commerce Commission that its position at this time is the same as it was at the time of the hearings in this case, concerning the Cummer scale of log rates, as now applied over the Atlantic Coast Line Railroad in Florida. We respectfully refer to the cost study made by our expert accountant, Mr. Pettijohn, pages 670 to 703, of the record, and pages 8 to 22, of the brief, filed by this Commission. This cost study, we think, fully and fairly establishes the fact that the rate under the Cummer scale and under the circumstances of its application, to practically only train-[fol. 1053] load movements, is without question reasonably compensatory.

This Commission notes with interest the argument made by interveners for the railroad interveners beginning at

page 4, and ending at page 7, of their exceptions. The following finding of the Examiner is what they object to:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances, a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce." (Sheet 9 of Examiner's report.)

We wish to call the attention of the Commission to the fact that the Atlantic Coast Line Railroad is the sole defendant in this case; that it is the only carrier who even attempted to furnish the Commission with the actual cost of service under the Cummer scale in Florida. The Atlantic Coast Line Railroad, we believe, would be the only carrier who could determine the actual cost of this service since it is not presumed by this Commission that the Seaboard Air Line and other intervening carriers have free access to the records of the Atlantic Coast Line. The Atlantic Coast Line has not excepted to this finding of the examiner, and it is significant that these interveners should question the correctness of this finding which only the Atlantic Coast Line could disprove.

[fol. 1054] The intervening carriers say at page 4, of their exceptions, that this proposed finding of the examiner is unsustained by the evidence. We submit that this is an inaccurate statement and rather a presumptuous one, in view of the facts as above stated.

The carrier intereveners very evidently overlook the fact that the Cummer scale of log rates is not under review in this proceeding, except insofar as it is alleged to discriminate against interstate commerce and to cast a burden on other traffic. The higher rates than the Cummer scale, found by the Examiner to be proper for interstate application, are exactly the interstate scale proposed by the carriers, and while it is believed by this commission that no traffic could move under it, and that no traffic would move under the Cummer scale from points in Florida to points in Georgia, it sees no objection to the publication of the carrier's proposed scale of rates even if they are mere paper rates.

The carrier interveners further on page 6, of their exceptions, compare the rates on logs under the Cummer scale and the rates on heavy commodities such as brick, sand, gravel and lime, and evidently wish to impress the thought that the movement of these commodities is the same as the log movement. These carriers do not demonstrate or seriously suggest that brick and such commodities are hauled with the same equipment and in the same quantities and every working day in the year, as are these log movements.

In conclusion, we respectfully submit to your Commission that the proposed report of the examiner in this case [fols. 1055 & 1056] is eminently fair and just, and that none of the exceptions filed seriously questions a single statement of fact or conclusion of law made by him in this report. We believe that it will stand every reasonable test.

Respectfully submitted.

A. S. Wells, Chairman. E. S. Matthews, Commissioner. Mamie G. Eaton, Commissioner. Theo. T. Turnbull, Counsel.

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[Title omitted.]

[fol. 1057] Before Interstate Commerce Commission

Reply to Exceptions to Tentative Report

As late as May 31, 1927, the Supreme Court of the United States said:

Railroads are subject to regulations by both the State and the United States. The delimitation of the respective powers of the two governments requires often nice adjustments. The Federal power is paramount. But public interest demands that whenever possible conflict between the two authorities and irritation be avoided. To this end it is important that the Federal power be not exerted unnecessarily, hastily or harshly.

[fol. 1058] Lawrence vs. St. L. S. F. R. Co. (71 Law Rep. 791, 793).

The doctrine of law enunciated in those terms by the Supreme Court of the United States is clearly applicable to the present case and the Examiner in substance so finds. Having critically considered all the evidence, Examiner Brown in his proposed report declares that there is no warrant for finding any undue prejudice of Georgia interstate shippers or that the Florida rates are on such a level as to result in any real discrimination against, or obstruction to interstate commerce.

The complainant in the case having presented testimony to the effect that under certain assumed conditions such discrimination or prejudice might result (although positive proof in that respect was lacking) the Examiner further declares:

"A finding of unlawful discrimination or undue prejudice cannot be predicated on a mere assumption or assertion of their existence."

Indeed, Examiner Brown in effect concludes that any disturbance of the Florida rates would be harsh and is unnecessary. Emphasizing what would otherwise be the grave consequences in the way of enormous financial losses and the disturbance of social and economic conditions which prevail in several important Florida communities the presiding Examiner quite apparent had no difficulty in concluding that the complainant had singularly failed to make [fol. 1059] out any sort of case which would justify or entitle exertion of federal power as to the Florida rates.

The defendant in the case (Atlantic Coast Line Railroad Company) has impliedly accepted such report as properly stating the evidence and correctly applying the necessary conclusions of law.

Certain railroads (which were allowed to intervene apparently as defendants) have lodged a document which is described as "exceptions to Examiner's proposed report." It is in behalf of the Seaboard, Central of Georgia, Southern and G. S. & F. Railways. Of course the complaint in the case does not in any way concern rates of those carries, and, at the most, their possible interest in the outcome was only contingent and collateral.

Exceptions also have been filed by the Georgia Public Service Commission, complainant in the case.

No exceptions have been filed by the other intervening complainants who made themselves parties to the proceeding.

For convnience this reply will deal first with the so-called "exceptions" lodged by the Seaboard Air Line and certain other intervening railroads.

[fol. 1060] I

Reply to exceptions of the Seaboard Air Line et al.

Apparently the railroads which filed these exceptions are in a quite anomalous position. Having sought and obtained leave to intervene in behalf of "defendant" they, nevertheless, now quite clearly want to occupy an entirely different position. Their real effort is to assist the complainant in removing a supposed obstacle to the increase of rates on logs between points in Georgia up to the so-called "Alabama scale." At the most their particular interest in the proceedings extends no farther than that, and a general interest which they might have in any case before this Commission involving rates on logs. Their contribution to the proceedings is entirely gratuitous.

At any rate, although having taken their position in the case, it is difficult to see anything in the proposed report of which they may complain. Certainly the railroads here being considered cannot (and they did not) complain that the Examiner erred in recommending a finding that the so-called "Alabama scale" would be just and reasonable for interstate application. That is what those intervening railroads wanted.

As to the finding of the Examiner that no case under Sections 3 and 13 of the Act was made by the complainant [fol. 1061] it would ordinarily be supposed that these railroads would have no different or greater interest in the mat ter than the only read defenrant involved, i. e., the Atlantic Coast Line. If these carriers really are intervening defendants then they are in no position to complain that as to the allegations under Sections 3 and 13 of the Act the Examiner has recommended dismissal of the case.

As a matter of fact, it is not entirely plain that these railroads do actually except to such conclusions of the Exam-

iner. Apparently their real grievance concerns the following:

Careful consideration of these (cost) studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory.

The railroad intervenors seem to fear that such a finding "would be seriously prejudicial to the interests of these interveners, as well as other carriers that are engaged in the transportation of logs in the territory here involved." In what way such finding would be seriously prejudicial to the interest of these carriers and others is altogether obscure. It is not proposed by the Examiner that the Florida log rates be ordered for application to any movements other than those to which they now apply. Taken in connection with the other findings that the "Alabama scale" [fol. 1062] would be appropriate for interstate application these intervening railroads cannot be warranted in any apprehensions which they profess to have with regard to the ultimate interpretation which might be placed upon a final decision like the one proposed by Examiner Brown.

It is to be borne in mind that the finding of Examiner Brown referred to goes no farther than that under the evidence the "Florida rates are not so low as to cast an undue burden on interstate commerce." There was no endeavor on the part of the Examiner to make a finding any broader than that. Without determining whether the measure of compensation received by the Atlantic Coast Line out of the Florida traffic is as fully remunerative as contended by the Florida Railroad Commission and the Florida shippers Examiner Brown went only so far as the law of the case actually required. It was only necessary to determine whether such Florida rates of the Atlantic Coast Line yield compensation reasonably sufficient to avoid the casting of an undue burden on interstate commerce. And of course under the evidence such finding was and had to be made.

There are no issues before this Commission calling for the fixation of minimum reasonable rates on Florida intrastate traffic. No such issue was tendered in the complaint and most certainly the complainant made no effort to set up such a case in its evidence. Whether a case of such sort

[fol. 1063] could lowfully be entertained by this Commission (independently of any question arising under Sections 3 and 13 of the Act) is doubtful, to say the least.

Apparently the whole point of confusion in the position of these intervening railroads arises from their failure to understand that with respect to the log rates of the Atlantic Coast Line in Florida the only appropriate findings are those which are pertinent to the precise and narrow issues in the case. This is not a general investigation; nor, indeed, does the case involve any considerable portion of the State of Florida. Therefore there can be no warrant for the intervening railroads or any other persons attributing to any findings in this case such general significance as would influence the measure of other log rates than those immediately involved. Indeed, if there be contained in the proposed report any such findings they are altogether in favor of the intervening railroads, because, certainly, approval of the measure of the "Alabama scale" for interstate application is of very much more general significance than anything else contained in the case.

Moreover, these intervening railroads are "shooting wild" when they assert (without any citation of authority in the record) that "there is a very substantial movement in single car lots and less than trainload quantities over the lines of the defendant." The rules of practice require that in excepting to any findings of fact by an Examiner [fol. 1064] there shall be furnished references to those parts of the record which are deemed to controvert, and to demonstrate the error of, the Examiner's conclusions.

In this instance, however, the intervening railroads simply make the bold assertion that the Examiner erred in his finding as to the unimportance of the less than trainload movements of the Atlantic Coast Line in Florida, and that the movement within the part of Florida here involved is nearly all solid trainloads daily. They do not question that as applied to the trainload movements the cost calculations clearly sustain the findings of Examiner Brown. Rather do they seek to cast doubt upon such findings by exaggerating the extent of movements in less than train load quantities. The apparent inability to cite any supporting evidence sufficiently disposes of such effort.

## II

### Exceptions of the Georgia Public Service Commission

The complainant in the case has not fined any exceptions in the form prescribed by the rules of practice. Rather does the document described as "exceptions" consist alone of a series of argumentative assertions which scarcely go to the real questions involved under the law, and which in any event are almost completely lacking authority either [fol. 1065] by citations to the record or controlling adjudications.

In considering the so-called "exceptions" of complainant it is important to observe in each instance the rather precise choice of language which the complainant uses. That is said because in most instances of apparent exception there is a complete omission to assert either that the findings are without evidence or that they are without the legal force which the Examiner attributes to them.

For instance, Examiner Brown makes the controlling finding that all but one of the mill men who testified for the complainant declared they would not be aided in any way in the making of interstate shipments merely by an advance in the Florida rates. And such was also the unanimous testimony of all the mill men who testified for the intervening shipper defendants.

If such finding of the Examiner is correct then of course it disposes of the whole case, under Sections 3 and 13. The complainant either must or ought to know that such is the legal situation; and yet without contradicting such finding of the Examiner and without citing any evidence to the contrary of what the Examiner declared, complainant nevertheless excepts to such finding on the ground that the purpose of the complaint is to bring about proper relationship between the inter and intrastate rates (Georgia Exceptions page 5).

[fol. 1066] That is typical of what is meant by what is said above regarding the style of language used by the complainant in its exceptions. Having excepted to such findings of the Examiner as to the testimony of complainant's own witnesses, it might be supposed that the basis of an exception would be either that such finding is not based on the

evidence or if supported by the evidence has no controlling effect in law.

But complainant does neither: while exception is taken to the controlling finding of the Examiner in the respect here being discussed the complainant has based such exception upon a mere statement of its own concerning the "purpose of the complainant.

There can be little doubt as to what was the purpose of the complainant. But if such purpose was frustrated by a complete failure of proof from complainant and the Examiner has correctly found the facts from the whole record and applied the law thereto, it makes no difference what was the purpose of complainant in bringing the case.

Of like character is the apparent attempt on page 4 to make an exception to something declared by the Examiner on sheet 7 of his report. But when analyzed it rather seems as if the complainant in such section of the document is agreeing with the Examiner as to the absence of any movement of logs from Florida to Georgia.

[fol. 1067] Immediately thereafter however, the complainant undertakes to explain away such significant fact by almost saying that such movement is prevented by the freight rate adjustment. If such a conclusion of fact were proper to be drawn from the evidence it would, of course, have a bearing on the case.

But although appearing as if making ready to advance such contention the complainant (near the bottom of Page 4 of its exceptions) shifts its ground quickly and says that witnesses for the complainant testified they had "attempted to make purchases in Florida and were prevented from doing so on account of the unreasonably high rate interstate, as compared with the intrastate rates in Florida, making it possible for the Florida manufacturer to pay a higher price for these logs than the Georgia manufacturer could afford to pay and absorb the difference in freight rates."

Thus again with respect to a controlling matter of fact the complainant fails to support any proper exception to the Examiner's conclusions that there is not now any movement of interstate commerce in logs over the Coast line from Florida to Georgia, that there is no likelihood of such movements occurring, and that in any event an ad-

vance in the Florida rates would not bring such interstate movements into existence. Apparently excepting to such conclusions of the Examiner the complainant, nevertheless, in its exceptions claims no more than that witnesses for the [fol. 1068] complainant testified they had been prevented from making purchases in Florida on account of the unreasonable high rate interstate, as compared with the intrastate rates in Florida. That, of course, sustains rather than controverts the conclusions of the Examiner. It is the high interstate rate of which complaint was made by the few Georgia shippers who took any interest in the proceedings and not the mere relationship between the inter and intrastate charges. And of course the real interest of those Georgia manufacturers is to prevent an increase in the Georgia intrastate rates.

On page 6 of its exceptions the complainant again seeks to justify its position with respect to the failure of its witnesses to describe the location and other characteristics of any commercial supplies of timbers in Florida available to them for purchase. Such attempted justification is confined to a reiteration of the circumstance that just at the time of the Valdosta hearing the Eppinger and Russell Tract was sold to parties who had no connection with this case and who began immediate construction of mills in the timbers.

But that seems a very insufficient explanation of the attitude of those witnesses for complainant, who were so obviously brought into the case by the Georgia Public Service Commission after securing the right to reopen the record as made at Valdosta.

While the matter has no bearing upon the complaint with [fol. 1069] respect to alleged violation of Section No. 3 nevertheless, the Georgia Commission excepts to the finding of Examiner Brown that the Florida movement in less than trainload quantities is unimportant. In that connection the complainant for the first time, and in evident desperation, seeks to shift its position with respect to the territory in Florida embraced within the complaint. In such exception as well as the other apparent intended on Page 7, the effort is made to include within the scope of this case the so-called South Florida territory.

But it certainly comes too late now to start over again in this case and try out the question of freight rates between

points in South Florida as compared with rates from North Florida to Georgia. Not remotely was any such question dealt with on the record. While witness Price, beginning with page 35 of the record, testified that the so-called "Cummer scale" applied all over the Atlantic Coast Line in Florida for hauls up to 170 miles, there was not made by the complainant the remotest effort to establish any case under the Interstate Commerce Act except from and within the territory described as North Florida.

Beginning at the bottom of page 10 of its exceptions the complainant undertakes to dissipate the force of a finding by the Examiner that the Atlantic Coast Line Railroad would lose considerable log traffic if there were any material increase in its Florida log rates. The complainant does [fol. 1070] not seem to except to that finding on any such ground as that the record fails to support it. Instead the complainant wanders off into a discussion of the alleged inequity of allowing a discrimination to exist against a manufacturer in Georgia in order that the Florida log traffic of the Coast Line may not be reduced.

Clearly, however, on that point the Examiner was dealing only with the question whether the Florida rates cast an undue burden on interstate commerce as a whole, such question being entirely separate and apart from any question of alleged undue prejudice under Section 3. In considering only the question whether the entire operations of the Coast Line are burdened by its Florida log rates it was entirely proper for the Examiner to point out that under the undisputed evidence the Coast Line would lose as a whole and not gain by an increase in its Florida rates here being discussed. But the Examiner did not remotely suggest that an actual, hurtful prejudice against Georgia shippers in interstate commerce should be justified merely in order that the Coast Line might retain its Florida log traffic. The purported exception of complainant respecting the above matter is entirely without merit and is based upon a clear misconception of the finding.

Again on page 11 of its "exceptions" complainant has misconstrued the proposed report of the Examiner. In such exception it is made to appear as if the construction of a new plant at this time by the Brooks-Scanlon Corporation [fol. 1071] would cost it only $2,500,000.00, while the cost of

moving such plant to the timbers would be between $3,000,000.00 and $4,000,000.00. But the complainant is straining somewhat in an effort to make an exception of that kind. Plainly the cost of moving the plant includes numerous items of loss and expense other than mere construction; and in addition the figure of original construction many years ago would not at all hold good today in view of the much higher plane of prevailing labor and other construction costs.

In that same exception the complainant then proceeds further to argue that there is no relationship between the reasonableness of freight rates and the cost of constructing lumber mills. It is made to appear as if the Examiner held to the contrary and therefore committed an error.

But that is not the situation at all. In determining whether under the evidence there is need for intervention of federal power to set aside and change State rates, the Supreme Court of the United States has repeatedly emphasized that such activity by federal authorities should not be indulged "harshly and unnecessarily." The Examiner therefore comprehensively analyzed and set forth the substance of the evidence as to what would be the harsh and hurtful consequences of any increase in the Florida log rates of the defendant, Atlantic Coast Line Railroad.

In setting forth what those consequences would be the [fol. 1072] Examiner is fully supported by the requirements of law in such situations. The lack of necessity for interfering with the State rates is made apparent from the testimony from complainant's own witnesses. The harsh consequences which would ensue from such interference are clearly portrayed by the intervening shipper defendants and are forcibly stated by the Examiner. To attempt to put the Examiner in the ridiculous position of having sought to measure the reasonableness of any rates by the cost of mill construction in Florida is only to be considered as indicating the inability of complainant to point out any real error contained in the proposed report.

On page 12 of the so-called "exceptions" of complainant, some sort of argument is attempted to be made with respect to the findings of the Examiner as to the availability of supplies of commercial timber in Florida and the possibility of

shipping logs therefrom into Georgia. It is difficult to determine just what is the intended basis of such exceptions. In one place it seems to be argued that the Examiner committed error in accepting the testimony of intervening shipper defendants and disregarding "entirely" the testimony of certain Georgia mill men introduced by the complainant.

But there is nothing in the tentative report which would suggest an acceptance of the testimony of any group of witnesses and a complete disregard of the testimony of any others. On the contrary it seems quite evident the Exam- [fol. 1073] iner has in large measure been influenced in all his conclusions by the testimony of complainant's witnesses as corroborated in many respects by the testimony of a number of competent witnesses for the Florida interests. In attempting to make an exception of the sort here referred to and failing altogether to point out by references to the record any testimony which the Examiner disregarded, or which he misunderstood, or which he has misstated, the complainant stands in the position of merely recording its view that the Examiner decided the case wrongly, but on what grounds it does not precisely state.

At the bottom of page 13 of the "Exceptions" the complainant again asserts that the Examiner has failed to give serious consideration to the evidence of the complainant which was submitted "for the purpose of showing the handicap the Florida manufacturer had over the Georgia manufacturer." Then the further point is made that the testimony of a small manufacturer in Georgia is entitled to as much consideration as the testimony of a large manufacturer in Florida.

Just what the complainant is thus driving at in such exception is difficult to understand. The Examiner in his report summarized the whole case as follows:

Testimony for complaiant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking.

[fol. 1074] That is the essence of the whole case and in excepting to such conclusion it might be supposed the complainant would specifically set forth or refer to the evidence upon which it relies to support a contrary conclusion. But

instead of doing so, exception to that important finding is based upon the contention that the testimony of a small Georgia lumber man is entitled to as much consideration as the testimony of a large Florida mill man, and that all the witnesses for the complainant testified to the "handicap the Florida manufacturer had over the Georgia manufacturer." Whatever that means it is not apparent to these intervenors.

On page 14 of the "exceptions" the complainant again wanders off on a tangent. It seems to be assumed that the only part of the decision of the Supreme Court in the Wisconsin Rate Case important enough to be considered is the holding that action of this Commission "should be directed to substantial disparity." The complainant seems to suppose that if there be a mere disparity of rate substantial in amount then a case has been made.

But that is the fundamental misconception of the complainant which has controlled it from the beginning. Not only must the disparity in rates be subtantial, but the Supreme Court further says that it must operate "as a real discrimination against and obstruction to interstate commerce."

[fol. 1075] The complainant ignores that portion of the decision of the Supreme Court and has proceeded from the beginning of this case on the mistaken assumption that nothing more need be shown than a mere disparity of rates substantial in amount. The further requirement that such disparity may not be dealt with by this Commission unless it operates in fact to restrain and cast a burden upon interstate commerce seems not to have been understood by complainant because neither in its evidence, in its original brief, nor in its exceptions, has the complainant appeared seriously to have sought to make out a case of such kind.

And lastly on page 16 of its "exceptions" the complainant quotes that part of the proposed report in which the Examiner declares that the revenue received by the Atlantic Coast Line out of its Florida log traffic is sufficiently compensatory to negative any contention that such rates are so low as to cast an undue burden on interstate commerce.

But although excepting to such conclusions the complainant grounds its exceptions upon its own insistence that "there is a large movement of logs between points in Flor-

ida not covered by" the cost calculations. Presumably the complainant has reference to movements over other railroads and possibly to some movements over the Coast Line outside the territory involved in this proceeding.

Certainly the language which complainant uses is not the equivalent of a direct challenge to the correctness of what the Examiner actually said.

[fol. 1076] Conclusion

It has not been attempted herein to take notice of various critical comments of the complainant concerning the report of Examiner Brown. Indeed, it has been difficult to make reply to the so-called "exceptions" because for the most part the complainant first indicated dissatisfaction with certain findings, and then, instead of supporting its position by citations to the record or to adjudicated cases, the complainant usually wanders off into a discussion of some matter other than the particular thing excepted to.

Upon the whole this conclusion must necessarily be gathered from all the proceedings; the complainant started off with an idea that an obstacle to the increasing of rates on logs within Georgia presented itself by the lower rates over the Coast Line within Florida; that in order to remove such obstacle it would suffice to bring complaint to this Commission directing attention to the difference between such Florida rates and the published interstate rates from Florida to Georgia; and that a mere exhibition of such substantial differences would constitute a "Shreveport case." When the intervening shipper defendants at the close of the Valdosta hearing so clearly indicated their view that the complainant had utterly failed even remotely to present evidence of the kind which would be essential to make out such a case, the complainant thereafter succeeded in obtaining [fol. 1077] leave to submit further evidence in its behalf in Jacksonville. Then at the Jacksonville hearing all but one of its own witnesses testified that an increase in the Florida rates would not enable shipments to be made in interstate commerce from Florida to Georgia and that the only remedy which might conceivably be of help to them would be the reduction of the interstate rates to the level of those prevailing in Florida. On the point whether even in such event the Georgia interests would be able to procure timber

in Florida, those witnesses were exceedingly vague and took refuge finally in the refusal to testify to the location or of the characteristics of such supplies as they thought might be available to them.

The intervening shipper defendants then demonstrated completely the absence of such timber supplies, the commercial impossibility of shipping logs from Florida to interior Georgia even if such supplies existed, and to the tremendous losses which the Florida interests would suffer, including the Atlantic Coast Line Railroad, should there be any change in the Florida rates.

The Examiner has found that the complainant failed to submit evidence sufficient to make out a case under the Constitution and laws of Congress in so far as concerns the matter of Florida rates. In support of such conclusion the Examiner has accurately stated the law and carefully presented the essential facts contained in the record, considering the evidence of all parties.

[fol. 1078] The complainant now appears to except to such proposed report; but when such exceptions are read with care it is bound to be concluded that even yet the complainant does not seem to understand what, under the law, would have to be proven in order to accomplish what they set out to do.

At the most, the chief complaint in the exceptions is an insinuation that the Examiner was controlled more by the testimony of large lumber interests in Florida than by small lumber interests in Georgia, and in effect the document winds up with a characteristic, time-honored plea that the little man should be protected against the big one.

[fol. 1079] This Commission will not be swayed in its conclusions by the resort of complainant to that method of appeal.

Respectfully submitted.

Brooks-Scanlon Corporation, by Edward P. Sanborn, Geo. L. Rutherford, Attorneys. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Chas. E. Cotterill, of Counsel.

Dated October 1, 1927, Jacksonville, Florida.

[fol. 1080] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted December 16, 1927. Decided August 2, 1928

1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.
2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in intrastate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice, and discrimination.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff, and E. M. Price for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; J. C. Jackson and H. A. Jackson for Jackson Brothers Lumber Company; J. E. Davies for himself; and C. C. Giddens for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and W. E. Kay for defendant.

Frank W. Gwathmey and Henry Thurtell for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and J. A. Streyer for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Tench, and Fred Pettijohn for Florida Railroad Commission.

T. J. McGinn for Board of Trade and city of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wil-

son Cypress Company, and Putnam Lumber Company; Edward P. Sanborn and George L. Rutherford for Brooks-Scanlon Corporation; H. P. Adair for Putnam Lumber Company, H. P. Osborne for Wilson Cypress Company; E. W. Mitchell for Cummer Cypress Company; J. S. Farish for Southeastern Forest Products Association; J. O. Cassidy and E. C. Green for Jacksonville Traffic Bureau; R. E. Mich for Southern Cypress Manufacturers' Association; and A. G. T. Moore for Southern Pine Association, interveners.

[fol. 1081] By the Commission

Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

Exceptions were filed by complainant and by interveners Seaboard Air Line, Central of Georgia, Southern, and Georgia Southern & Florida to the report proposed by the examiner, to which the Florida Railroad Commission and interveners Jacksonville Traffic Bureau, Southeastern Forest Products Association, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company replied. The case has been orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed May 3, 1926, complainant alleges on behalf of Georgia log shippers that the rates on logs in carloads from points in Florida on defendant's lines to destinations in Georgia on defendant's lines are unjust and unreasonable and, as compared with the rates applicable intrastate within Florida, unjustly discriminatory and unduly prejudicial, and that defendant's Florida intrastate rates are unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce. Reasonable, nonprejudicial, and nondiscriminatory rates for the future are sought.

The Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates. The Elberta Crate Company of Bainbridge, Ga., intervened in support of the complaint. The Seaboard Air Line, Central of Georgia, Southern, Georgia Southern & Florida, and the American Short Line Rail-

road Association intervened in opposition to the continuance of the present Florida intrastate rates and to the extension of such rates interstate to Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company, hereinafter referred to as the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Sawmill Association, now the Southeastern Forest Products Association, the Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed on the grounds that evidence sufficient to constitute a cause of action within the power of this commission to remedy had not been submitted and that the allegations of the complaint had not been sustained. The evidence justifies consideration of the case on its merits and the motion is denied. [fol. 1082] While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles.

The interstate rates from north Florida to Georgia are published in cents per 100 pounds, minimum 40,000 pounds, and apply between north Florida and points south of Charleston, S. C. They became effective August 15, 1925, as a part of a general revision of defendant's log rates. From points south of Jacksonville, Gainesville, Burnett's Lake, and High Springs higher interstate rates apply. The Florida intrastate rates assailed are published in amounts per car, minimum 50,000 pounds, excess in proportion, and apply on logs, except cedar, for 170 miles and under. There follows a brief history of the latter rates.

On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jack-

sonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Mil-dale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwanee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the Carpenter-O'Brien Company, the predecessor of intervener Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in Lafayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fla., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars every other day, Sunday and legal holidays excepted, at a rate of $12 per car, minimum 50,000 [fol. 1083] pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursant to this contract defendant filed schedules with the Florida commission extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on trainloads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of the defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale

was further extended by establishing a rate of $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida. The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the Carpenter-O'Brien contract from 1915 to 1926, both inclusive, and on argument defendant estimated that at the rate of movement at that time the contract would have from two to three years more to run. The record also shows that intervener Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.

The Florida commission and the Florida interveners contend that the Florida intrastate rates are remunerative to defendant and should not be changed. They neither advocate nor oppose the extension of such rates interstate to Georgia. The intervening carriers contend that defendant's Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates. Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, [fol. 1084] defendant submitted a proposal to revise such rates down to the level of the Alabama intrastate log rates which became effective June 1, 1925, pursuant to an order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds. The proposed rates are on substan-

tially the same basis as the present rates under the scales prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81, from points in South Carolina south of Columbia to Savannah, Ga., and in Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. They are on the same basis as those prescribed in Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant expresses a willingness to establish these rates for interstate application over its entire system except south Florida, and would apply them intrastate in North Carolina, South Carolina, and Georgia if permitted by State authorities. From south Florida defendant would establish interstate rates approximately 15 per cent higher than from north Florida.

The present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles, follow:

| Distance | Florida-Georgia interstate | | Florida intrastate | | Proposed interstate | |
|---|---|---|---|---|---|---|
| | Rate | Earnings | Rate | Earnings | Rate | Earnings |
| | Cents | | Cents | | Cents | |
| 5 miles | 2.5 | $12.50 | 1.71 | $8.55 | 2.5 | $12.50 |
| 10 miles | 3 | 15.00 | 1.71 | 8.55 | 2.5 | 12.50 |
| 15 miles | 3.5 | 17.50 | 1.71 | 8.55 | 3 | 15.00 |
| 20 miles | 3.5 | 17.50 | 1.71 | 8.55 | 3 | 15.00 |
| 25 miles | 4 | 20.00 | 1.71 | 8.55 | 3.5 | 17.50 |
| 30 miles | 4 | 20.00 | 1.71 | 8.55 | 3.5 | 17.50 |
| 35 miles | 4.5 | 22.50 | 1.71 | 8.55 | 4 | 20.00 |
| 40 miles | 4.5 | 22.50 | 1.71 | 8.55 | 4 | 20.00 |
| 45 miles | 5 | 25.00 | 2.10 | 10.50 | 4.5 | 22.50 |
| 50 miles | 5 | 25.00 | 2.10 | 10.50 | 4.5 | 22.50 |
| 55 miles | 5.5 | 27.50 | 2.10 | 10.50 | 4.5 | 22.50 |
| 60 miles | 5.5 | 27.50 | 2.10 | 10.50 | 5 | 25.00 |
| 65 miles | 6 | 30.00 | 2.30 | 11.50 | 5 | 25.00 |
| 70 miles | 6 | 30.00 | 2.30 | 11.50 | 5 | 25.00 |
| 75 miles | 6.5 | 32.50 | 2.30 | 11.50 | 5.5 | 27.50 |
| 80 miles | 6.5 | 32.50 | 2.30 | 11.50 | 5.5 | 27.50 |
| 85 miles | 7 | 35.00 | 2.30 | 11.50 | 5.5 | 27.50 |
| 90 miles | 7 | 35.00 | 2.30 | 11.50 | 6 | 30.00 |
| 95 miles | 7 | 35.00 | 2.60 | 13.00 | 6 | 30.00 |
| 100 miles | 7 | 35.00 | 2.60 | 13.00 | 6 | 30.00 |
| 110 miles | 7.5 | 37.50 | 2.80 | 14.00 | 6.5 | 32.50 |
| 120 miles | 8 | 40.00 | 3.20 | 16.00 | 6.5 | 32.50 |
| 130 miles | 8.5 | 42.50 | 3.20 | 16.00 | 7 | 35.00 |
| 140 miles | 8.5 | 42.50 | 3.40 | 17.00 | 7 | 35.00 |
| 150 miles | 9 | 45.00 | 3.40 | 17.00 | 7.5 | 37.50 |
| 160 miles | 9 | 45.00 | 3.40 | 17.00 | 7.5 | 37.50 |
| 170 miles | 9.5 | 47.50 | 3.70 | 18.50 | 8 | 40.00 |

[fol. 1085] Complainant introduced exhibits showing that defendant's proposed interstate rates are higher than its intrastate log rates in various of the southeastern States, than the average of such intrastate rates, and than the combined average of its intrastate and interstate rates. Rates substantially the same as those proposed by defendant were, however, prescribed by complainant in 1925 for application within Georgia, and while complainant's order was later rescinded, its rate expert testified that the rates then prescribed were in his opinion on a reasonably low basis.

Complainant also submitted numerous comparisons between the Florida intrastate rates and the interstate rates to show undue prejudice to interstate shippers to Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Ga., and undue preference of intrastate shippers to Florida points. No movement from Florida to Georgia is shown and complainant states that there can be none because of the substantially higher level of the rates interstate than intrastate. There are 64 sawmills along defendant's line in Georgia within 170 miles of Florida, and representatives of some of them testified that there is available timber in Florida which could be economically purchased and transported over defendant's line to Georgia mills if the rates were reasonable. The following will illustrate the comparisons referred to. The charges per car of 50,000 pounds from Live Oak, Fla., to Jacksonville, 128 miles, are $16, while from Live Oak to Waycross, 83 miles, the charges are $35.

Defendant submitted evidence purporting to show the estimated cost of transporting logs of the Brooks-Scanlon Corporation during September, 1926, from Perry and Carbur to Eastport, 166 and 144 miles, respectively; 1,371 loaded cars were transported in trainloads of from 39 to 50 cars, and the estimated cost per loaded car was $19.13. This cost does not include interest on investment except on equipment used. Based on a lading of 60,200 pounds, the average of 983 carloads transported for this shipper and intervener Putnam Lumber Company, the rate for the average distance would yield revenue of $20.47 per car, but $1.34 over the estimated cost of service for trainload movements. The Florida commission also introduced a cost study to show that the intrastate rates are remunerative to

defendant. Its estimate was that $14.62 represents the approximate cost per car of transporting logs in trainloads between the above points, which, deducted from the average revenue per car of $20.47, leaves a net revenue of $5.85 per car. Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination. Neither can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout [fol. 1086] Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads.

Defendant also shows that the earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement. For example, it shows that the interstate rate on sand and gravel for 160 miles, equivalent to 6.75 cents per 100 pounds, yields revenue of $62.46 per car based on a lading of 92,540 pounds, as contrasted with $18.70 on logs, based on a lading of 55,000 pounds. The weights used were the actual average weights on defendant's lines for 1925. It is also shown that these Florida intrastate rates are considerably lower than any other rates, intrastate or interstate; referred to of record.

Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic; that these interveners have expended millions in the development of their properties, communities have grown up in the vicinity of their mills, and abandonment of the present mill sites would result in heavy losses to them and to their employees; that it would cost intervener Brooks-Scanlon Corporation between three and four million dollars to move its plant from Eastport, which would prbably lose most of its 5,000 inhabitants, as practically every family is dependent upon the operation of the plant; and that other Florida lumber companies and communities would be similarly affected. They also testified that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by

Georgia log shippers, as all of such timber is owned by Florida mills; and that while there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber.

The interstate rates which defendant proposes from north Florida are in our opinion reasonable. They are, as heretofore stated, the same as those prescribed by the Alabama commission for intrastate application within that State, and by us for interstate application in other sections of the Southeast. All of the Florida points from which they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reasonable rates that are higher than from and to other points in southern territory.

[fol. 1087] It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level.

We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville,

Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in cents per 100 pounds, minimum weight 40,000 pounds; which rates we find are and will be reasonable:

| Distance | Rate, cents |
|---|---|
| 10 miles and less | 2.5 |
| 20 miles and over 10 | 3 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8 |

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and [fol. 1088] should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions.

An appropriate order will be entered.

[fol. 1089] Order

At a Session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 2nd day of August, A. D. 1928.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before October 10, 1928, and thereafter to abstain, from publishing, demanding, or collecting its present rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, from and to the points designated in the next succeeding paragraph hereof.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before October 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of logs, except walnut, cherry, and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in the State of Georgia, the following rates in cents per 100 pounds, subject to a minimum weight of 40,000 pounds:

| Distance | Rate, cents |
|---|---|
| 10 miles and less | 2.5 |
| 20 miles and over 10 | 3 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8 |

[fol. 1090] It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the Commission, division 4.

George B. McGinty, Secretary. (Seal.)

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[fol. 1091] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF BROOKS-SCANLON CORPORATION, PUTNAM LUMBER COMPANY, WILSON CYPRESS COMPANY, CUMMER LUMBER COMPANY, CUMMER CYPRESS COMPANY, JACKSONVILLE TRAFFIC BUREAU, AND SOUTHERN PINE ASSOCIATION, INTERVENING DEFENDANTS, FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER OF DIVISION 4

Come now the intervening shipper defendants in the above entitled proceeding and respectfully pray that the

effective date of the Order of Division 4, previously entered herein, be postponed for ninety days subsequent to October 10. In support of said petition such interveners respectfully show as follows:

That under the decision and order in this proceeding the intrastate rates on logs, etc., between points in Florida would be subjected to material increases. That numerous mills within the State of Florida which consume logs cut at nearby Florida points would, under the said increased rates, suffer by reason of these material advances in transportation charges. That these petitioners have a vital interest in this proceeding.

That the decision of Division 4 contains statements of fact which are incorrect, contrary to the evidence and which [fol. 1092] have a vital bearing upon the conclusions reached.

That these petitioners desire sufficient time within which to prepare a petition for re-argument and reconsideration. But that in order to prepare such a petition, setting forth by necessary references to the transcript of record the true facts in this case, additional time will be required. That the effective date of the Commission's order, namely, October 10, 1928, allows, in petitioner's opinion, an unnecessarily short time between the receipt of the Commission's decision, namely the middle of August, and the effective date thereof, to enable these petitioners to give adequate study to the report and to prepare their petition for re-argument and reconsideration.

That under the Division's decision the prescribed rates on intrastate traffic would be published on five days' notice instead of the usual statutory period of not lest than thirty days.

That in view of the fact that the decision of Division 4 would ignore and override the statutory requirements of the State of Florida with respect to changes in intrastate rates; in view of the fact that the decision of Division 4 is a peremptory exercise of Federal power over intrastate rates; in view of the fact that the conclusions of the Division are without evidence in support thereof and contrary to the weight of the evidence; and in view of the fact that the method prescribed by it for removing the alleged undue prejudice would not result in a movement of logs from

Florida points to Georgia points, these petitioners respectfully request that Division 4 issues a further order in this proceeding postponing the effective date of said order for at least ninety days beyond October 10, 1928.

These petitioners allege, on behalf of the lumber mills within the State of Florida which are owned by Companies [fol. 1093] parties to this proceeding, that the conclusions of the Commission are unsound and unwarranted in fact and in law, and that the order, if not postponed, will subject these petitioners to irreparable damages and deprive them of their lawful rights.

In submitting this petition for a stay of the order in this proceeding these petitioners are of the opinion that it will require about three weeks for the preparation of a careful and detailed analysis of the record which they shall offer in support of their allegations that the Division's report contains erroneous statements of vital facts; and that after said petition is prepared and served upon the parties it will require some weeks for answers thereto; that in order that the entire Commission may have adequate time for a careful consideration of the petition for re-argument and reconsideration and answers thereto, and for notice to the parties of the Commission's action thereon, it would require approximately six weeks. We estimate the total minimum time that would be required would be in the neighborhood of ninety days after October 10th.

Respectfully submitted.

Brooks-Scanlon Corporation, by Edward P. Sanborn, Geo. L. Rutherford, Attorneys. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Jacksonville Traffic Bureau, by J. O. Cassidy, Attorney. Southern Pine Association, by A. G. T. Moore, Attorney. Chas E. Cotterill, of Counsel.

[fol. 1094] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER—
Filed Aug. 22, 1928

To the Interstate Commerce Commission, Washington, D. C.:

Comes now the Railroad Commission of the State of Florida by Fred H. Davis, Attorney General of the State of Florida, parties to this proceeding, and, on behalf of the people of the State of Florida, respectfully Petition and pray that Division 4 of the Interstate Commerce Commission postpone and set aside the order which the said Division 4 has entered in this case, the same to become effective on October 10, 1928.

Your Petitioners respectfully show:

That the decision and order in this proceeding were not served upon these petitioners until the middle of August, 1928.

That the said decision and order, if not postponed, will require the defendant Atlantic Coast Line Railroad Company to increase the rates for the transportation of logs from and to points on its lines wholly within the state of Florida for application on intrastate traffic.

That under the laws of the sovereign state of Florida the common carrier railroads, including the said defendant Atlantic Coast Line Railroad Company, are forbidden and prohibited from changing their intrastate rates without first having applied to the Railroad Commission of the State of Florida and receiving authority therefor from the said Commission.

That no such application for changes in the intrastate rates on logs has been filed with the Railroad Commission of Florida for authority to increase its rates on this class of traffic;

[fol. 1095] That the said order of the Interstate Commerce Commission in this proceeding will, if not postponed, require the said Defendant Atlantic Coast Line Railroad Company to disobey and disregard the express statutory laws of the state of Florida.

That, in the opinion of these Petitioners, the said Decision and order of Division 4 in several important aspects fails to conform to the evidence adduced by these Petitioners and other intervening defendants, and that the conclusions reached by the said Division 4, as a result of errors of fact, would be different if the true facts were better known to and understood by the said Division.

That, in view of these opinions of Petitioners they have in prospect the purpose and desire to prepare, after careful study of the evidence of record, a Petition for Further Argument and Reconsideration in this Proceeding, setting forth in detail the evidence of record in support of allegations of errors of fact and errors in the conclusions based thereon.

That these Petitioners find that it will be impracticable to prepare and present to the said Interstate Commerce Commission a carefully prepared petition of the kind they have in mind and have the said petition served upon the parties, answers thereto returned and proper consideration thereof given thereto by the Interstate Commerce Commission prior to the effective date of the said order, namely October 10, 1928.

Wherefore these Petitioners, in order to make certain that no errors of fact are made the basis of the conclusions of the Interstate Commerce Commission, and in order that there may be proper time for adequate consideration of the Petition for Reargument and Reconsideration which these Petitioners desire to prepare and file, present this their Petition for a stay of the effective date of the said order of Division 4 in this case for a period of not less than 90 days after October 10, 1828.

Railroad Commission of the State of Florida, Fred H. Davis, by Fred H. Davis, Attorney General of the State of Florida.

Tallahassee, Fla., August 21, 1928.

[fol. 1096] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF RAILROAD COMMISSION, STATE OF FLORIDA, FOR Postponement of Effective Date of Commission's Order Prescribing Intrastate Rates on Logs Over the Atlantic Coast Line Railroad in Florida.

Now comes the Railroad Commission, State of Florida and respectfully petitions the Interstate Commerce Commission for a sixty (60) day postponement of the effective date of the order entered prescribing intrastate rates on logs over The Atlantic Coast Line Railroad in Florida to take effect November 10th, 1928, and as grounds, respectfully show:

1

That on August 2nd, A. D. 1928, Division 4 entered an order prescribing the rates on logs intrastate in Florida, over The Atlantic Coast Line Railroad effective October 10th, 1928. That thereafter, on, to-wit: August 27th, A. D. 1928, an order was entered postponing the effective date of [fol. 1097] Division Four's order and making the rate prescribed by Division Four take effect on or before November 10th, 1928. That this last mentioned order was entered after your petitioner had filed its petition for postponement of the effective date of said order of Division 4 in order to allow your petitioner sufficient time to prepare and file a petition for reconsideration and reargument before the entire Commission and to have the same acted upon.

2

That your Petitioner on October 1st, 1928, filed its petition for reconsideration and reargument of this case before the entire Commission and that the same is now pending and no order has been entered thereon. That your Petitioner does not believe the Commission as a whole will have sufficient time to carefully consider your Petitioner's request for reconsideration and reargument of this case prior to November 10th, 1928, the present effective date of Divi-

sion 4's order; and in the event the Commission refuses to reconsider this case and enters its order denying the petition for reconsideration and reargument before the 10th day of November, 1928, sufficient time will not be given the lumber interests directly affected in which to take such action as may be necessary to protect their interests.

[fol. 1098] The Petitioner therefore respectfully prays that Division 4 issue a further order in this proceeding postponing the effective date of its present order for a period of at least sixty (60) days subsequent to November 10th, 1928.

Respectfully submitted.

Railroad Commission, State of Florida, by Fred H. Davis, Attorney General.

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[fol. 1099] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER POSTPONING EFFECTIVE DATE OF ORDER—Oct. 19, 1928

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the effective date of the order heretofore entered in this proceeding on August 27, 1928, be, and it is hereby, postponed to December 10, 1928.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1100] STATE OF GEORGIA:

Georgia Public Service Commission, Atlanta

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary; E. M. Price, Rate Expert; S. J. Smith, Jr., Special Attorney; J. Houstoun Johnston, Consulting Engineer

File 16197

BEFORE INTERSTATE COMMERCE COMMISSION, October 19, 1928

[Title omitted]

PROTESTING PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.:

The Georgia Public Service Commission, complainant in the above stated docket, files this its protest against petition of Railroad Commission of State of Florida, Brooks-Scanlon Corporation, et al, and other intervenors for further postponement of effective date of your order in this case.

The original order of your Honorable Commission is dated August 2, 1928, and was made effective October 10, 1928. These same intervenors petitioned you for a postponement of ninety days of the effective date of your order in order that they might have sufficient time to prepare a petition for reargument and reconsideration. The Georgia Public Service Commission, complainant, protested any postponement of the effective date of your order but by order dated August 27, 1928, you did grant postponement of the effective date of the rates covered by the fourth paragraph of your order until November 10, 1928, and it was suggested by the Honorable Commissioner Meyer in his letter dated August 29th, addressed to Honorable Fred H. Davis, Attorney General, State of Florida, that the petition for reargument and reconsideration be filed on or before

October 1st. The suggestion of Honorable Commissioner Meyer was complied with and the complainant, Georgia Public Service Commission, filed brief in opposition to said petition October 6, 1928.

[fol. 1101] The complainant, Georgia Public Service Commission, is in full accord with the view expressed by Honorable Commissioner Meyer in his letter to Honorable Fred H. Davis, Attorney General, State of Florida, to the effect that, "it is believed that the postponement already made will give the interested parties ample time to file a petition for reconsideration and reargument, the opposing parties time to answer, and the Commission time to dispose of the petition." The prediction of Honorable Commissioner Meyer has already been fulfilled insofar as the petitioning intervenors and the complainant are concerned, in that the petition for reargument and reconsideration was filed October 1st and the complainant, Georgia Public Service Commission, promptly filed brief in opposition to same.

The only reason advanced by the petitioning intervenors for further postponement is the presumption or fear that your Honorable Commission will not act on their petition for reargument and reconsideration in sufficient time prior to November 10th to enable the petitioning intervenors to take such action as they may deem fit or necessary to protect their interests. In other words, these petitioning intervenors doubt the accuracy of the estimate of time necessary as made by Honorable Commissioner Meyer, notwithstanding the fact that Honorable Commissioner Meyer is a member of Division 4 and has given this case thorough consideration before issuing the order first made effective October 10th. The evidence in this case shows clearly that the Georgia interests are being greatly injured under the present adjustment of rates and this condition will be relieved only when the findings in your order of August 2, 1928, are made effective. This complaint has been pending before your Honorable Commission for many months and the complainant, Georgia Public Service Commission, urges that no further delay be granted.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman, by E. M. Price, Rate Expert.

[fol. 1102] [File endorsement omitted]

STATE OF GEORGIA:

Georgia Public Service Commission, Atlanta

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary; E. M. Price, Rate Expert; S. J. Smith, Jr., Special Attorney; J. Houstoun Johnston, Consulting Engineer

File 16197

BEFORE INTERSTATE COMMERCE COMMISSION, AUGUST 24TH, 1928

[Title omitted]

PROTESTING PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER—Filed Aug. 27, 1928

Hon. George B. McGinty, Secretary Interstate Commerce Commission, Washington, D. C.

The Georgia Public Service Commission complainant in the above stated docket, files this, its protest against petition of the Railroad Commission of the State of Florida and other intervenors for a postponement of the effective date of your order in said case.

The paragraphs of the petition of the Railroad Commission of Florida and other intervenors are not numbered. However, we will endeavor to answer each paragraph consecutively, giving our reasons why said petition should not be granted.

1. The decision of your Honorable Commission is dated August 2, 1928, and was received by the Georgia Public Service Commission August 17, 1928, and petitioners, Railroad Commission of Florida, admit same was received by [fol. 1103] them on or about that date. Therefore, admittedly the order in said case was received fifty-four days before the effective date, which in our opinion is in abundance of time for the Florida Railroad Commission and

other intervenors to prepare and file briefs or protests without postponement of the effective date of said order.

2. We admit that the decision of your Honorable Commission will require the defendant, Atlantic Coast Line Railroad Company, to increase the rates for the transportation of logs from and to points on its lines wholly within the State of Florida for application on Intrastate traffic, but the decision is amply suported by the law and evidence in the case.

In addition to the preponderance of evidence consisting of rate exhibits showing the unreasonableness of the Florida Intrastate rates as compared with the Interstate rates from Florida to Georgia, your Honorable Commission is respectfully referred to Exhibit No. 16 filed by witness Perrin which is a letter dated at Tallahassee, Florida, August 18, 1915, addressed to E. C. McLeod, Kendrick, Florida, by the Florida Railroad Commission, reading in part as follows:

"Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April, 1914, it came to the attention—of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

[fol. 1104] To be perfectly frank, in the opinion of the Commission, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Company, largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company."

It will be noted from the above quoted Exhibit the Railroad Commission of Florida admitted that the rates under

review were too low and were not made by the Florida Railroad Commission or put into effect with the approval of the Florida Railroad Commission.

3. In answer to this paragraph we submit that after the most thorough investigation which your Honorable Commission has made in this proceeding, including the admission on the part of the Railroad Commission of Florida that the Intrastate rates in Florida under review are too low, your decision is in accord with paragraph 4 of Section 13 of the Interstate Commerce Act; viz,

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding."

4. The Georgia Public Service Commission submits that under the provisions of the order of your Honorable Commission it is not necessary for the defendant, Atlantic Coast [fol. 1105] Line Railroad Company, to file a petition with the Railroad Commission of Florida, and in obeying the mandates of the order of your Honorable Commission the defendant, Atlantic Coast Line Railroad Company, would not be guilty of an illegal act by disregarding an express statute law of the State of Florida.

5. Answered in Paragraph 4.

6. Petitioners for postponement, state:

"That, in the opinion of these Petitioners, the said Decision and order of Division 4 in several important aspects fails to conform to the evidence adduced by these Petitioners and other intervening defendants, and that the conclusions reached by the said Division 4, as a result of errors of fact, would be different if the true facts were better known to and understood by the said Division."

The Georgia Public Service Commission, complainant in this proceeding, submits that this complaint was acknowledged by your Honorable Commission on May 3, 1926. Hearings were had at Valdosta, Georgia, beginning October 26, 1926, and again at Jacksonville, Florida, beginning January 18, 1927. Briefs were filed with your Honorable Commission May 1, 1927. The Examiner's proposed report was submitted on or about August 15, 1927, and exceptions to the Examiner's proposed report were filed September 6, 1927, and oral argument was had before Division 4 December 16, 1927. The final order of your Honorable Commission is dated August 2, 1928, and it is ridiculous for the petitioners for postponement of effective date of this order to now say that your order, "in several important aspects, fails to conform to the evidence adduced by the Florida Railroad Commission and other intervening defendants, and the conclusions reached, as a result of errors of fact, would be different if the true facts were better known to, and understood by, the said Division 4."
[fol. 1106] The Florida Railroad Commission and all other interveners have had every opportunity to submit all relevant facts by way of evidence, brief and oral argument, and it is nothing short of a reflection upon the members of your Honorable Commission constituting Division 4 for the petitioners for postponement to now charge that, after having the matter under consideration for eight months after the close of oral argument, you have overlooked any important evidence in the case.

7. Petitioners for postponement state, "they have in prospect the purpose and desire to prepare, after careful study of the evidence of record, a petition for further argument and reconsideration in this proceeding."

At the time this complaint was filed with your Honorable Commission by the Georgia Public Service Commission a copy was furnished to the Railroad Commission of Florida. Hearings were had at Valdosta, Georgia, and Jacksonville, Florida, briefs were filed, the proposed report of the Examiner was submitted and oral argument was concluded on December 16, 1927. In other words, the petitioners for postponement, Florida Railroad Commission, have had more than two years to study this complaint and it is absurd to now come before your Commission and ask for additional time to make "a careful study of the evidence of record."

8. Petitioners for postponement state that "it will be impracticable to prepare and present to the Interstate Commerce Commission a carefully prepared petition of the kind they have in mind and have the said petition served upon the parties, answers thereto returned and proper consideration thereof given thereto by the Interstate Commerce Commission prior to the effective date of the said order, [fol. 1107] namely October 10, 1928."

We feel that this part of the petition for postponement is fully answered by Paragraph 7. After the great lapse of time since the beginning of this case and the opportunities allowed by your Honorable Commission to all parties of record to submit briefs and oral argument we can not conceive of any party of record requiring any such additional time as petitioned for by the petitioners for postponement.

The evidence in this case is clear that the lumber manufacturers in Georgia are being grossly discriminated against by the prevailing rates in Florida and the rates from Florida to Georgia, and your Honorable Commission has correctly found that this discrimination should be removed and has prescribed the manner by which the discrimination shall be removed. This discrimination has existed for a long period of time and protestants to the petition for postponement urge that no further delay be granted, and that the relief to the Georgia saw mill interest, as provided for in your order, be allowed to become effective on October 10, 1928.

The record in this case shows that it has been one of continuon delay, at the request of the Florida Railroad Com-

mission and other intervenors. After a three days hearing at Valdosta intervenors submitted no evidence but asked for this opportunity at another hearing. The hearing at Jacksonville, Florida, was first assigned for January 5, 1927, but was postponed to January 18, 1927. Briefs were required to be filed by April 15, 1927, but at the request of intervenors this time was extended to May 1, 1927.

[fol. 1108] It is the opinion of protestants, Georgia Public Service Commission, that the purpose of the petition for postponement of effective date of the order of your Honorable Commission is to further and unnecessarily delay the removing of the long existing preferential rates to the great injury of the Georgia interests now enjoyed by the Florida saw mill interests and we insist that this should not be permitted, as petitioners for postponement have failed absolutely to advance any reason why the petition should be granted and same should be denied.

Respectfully submitted.

Georgia Public Service Commission, by James A. Perry, Chairman, by E. M. Price, Rate Expert.

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[fols. 1109 & 1110] INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER RE EFFECTIVE DATE—Aug. 27, 1928

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the fourth paragraph of the order heretofore entered in this proceeding on August 2, 1928, shall become effective on or before November 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

It is further ordered, That in all other respects the said order of August 2, 1928, shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

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[fol. 1113] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REARGUMENT AND RECONSIDERATION ON BEHALF of Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, Cummer Lumber Company, Cummer Cypress Company, Jacksonville Traffic Bureau, Inc., Southeastern Forest Products Association, Successor to Georgia-Florida Saw Mill Association, Southern Cypress Manufacturers Association, and Southern Pine Association, Intervening Defendants

Come now the Intervenors, named above, and respectfully petition the Interstate Commerce Commission to grant re-argument and re-consideration, and to vacate and set aside the order of Division 4 heretofore entered in this proceeding.

## I.—Statement

### Conclusions of Division 4

In its report Division 4 found that the interstate rates on logs, except walnut, cherry and cedar, in carloads from Florida points north of and including Jacksonville, Gainesville, Burnetts Lake and High Springs, Fla., to destinations [fol. 1114] in South Georgia for distances of not over 170 miles were and are unjust and unreasonable. In its order the Division prescribed a distance scale of maximum reasonable rates from North Florida to South Georgia.

Division 4 also found that the Florida intrastate log rates of the defendant resulted in undue preference and advantage of shippers of intrastate traffic within the state of Florida, in undue prejudice to shippers of interstate traffic from points in the state of Florida to points in the state of Georgia and in unjust discrimination against interstate commerce. The Division prescribed the same scale of rates for application on defendant's line within the state of Florida, to cure the alleged undue prejudice and discrimination.

This petition for re-argument and re-consideration deals with the findings of undue prejudice and unjust discrimina-

tion. The prescribed maximum reasonable rates from Florida to Georgia have been published to become effective October 10, 1928. The effective date of the intrastate rates has been modified so that the rates will become effective on November 10, 1928 in accordance with a supplemental order of Division 4, issued on August 27, 1928 for the purpose of allowing these petitioners and others sufficient opportunity to present their petitions for re-argument and re-consideration.

In this petition we shall deal separately with the finding of undue prejudice against Georgia shippers and the finding of unjust discrimination against interstate commerce.

Petitioners allege that the finding of undue prejudice against Georgia shippers is without any evidence to support it, in that no Georgia shippers are hurt by the existing rates and no Georgia shippers would be benefited by the [fol. 1115] prescribed rates; and in that no interstate traffic in logs is moving from North Florida to Georgia today and there could not, by any possibility, be any movement in the future under the rates prescribed by Division 4. Petitioners will attempt to show that in these major particulars the conclusions of the Division are without foundation.

Petitioners further alleged that the finding of unjust discrimination against interstate commerce is wholly unsupported by evidence, is based upon several erroneous assumptions of law and of fact, and that under the issues of this case as defined and restricted at the hearing the Interstate Commerce Commission is without authority to regulate this intrastate commerce.

## II.—Finding of Undue Prejudice of Georgia Shippers Should be Reversed

### 1. No Georgia Mills are Prejudiced

A careful review of the evidence is convincing that no Georgia mills are prejudiced by existing log rates within Florida and no Georgia mills, or user of logs, has any desire to see the Florida intrastate rates changed.

Mr. Price, the rate expert of the Georgia Commission, and sole witness introduced by that Commission at the original hearing, offered rate exhibits only. If any Georgia

mills had been concerned with the Florida intrastate rates or the interstate rates from Florida to Georgia they would have appeared at the original hearing in support of the complaint. Many Georgia mills, through their Associations, actually opposed the complaint, thus proving the lack of foundation of any real prejudice against Georgia mills.

[fol. 1116] Q. Mr. Price do you know whether there is any movement of logs from Florida shipping points to Georgia destinations?

A. No, I do not know of my own knowledge, but from the investigation I have made I do not think it possible for there to be any extensive movement (Record page 16).

Evidently Mr. Price was sufficiently acquainted with the lumber business in this territory to know that the only practical way to use logs is by mills located in the timber. Evidently that is what he had in mind although he is not qualified to testify concerning any present or prospective movement.

Petitioners challenge anyone to point to the testimony of any witness in this case as supporting in any measure whatsoever by competent evidence that any Georgia mill is in competition with any Florida mill for North Florida logs, that any Georgia mill has ever made a shipment of logs from North Florida to Georgia or that any Georgia mill operator has any real expectancy, desire or ability to ship any logs or to compete with any Florida mills in the purchase of logs in North Florida. Under these conditions we respectfully submit that the finding of undue prejudice of Georgia shippers is wholly without any evidence to show that any Georgia shipper has any real or substantial interest in this proceeding or in the measure of the Florida intrastate log rates, or that the mere difference in rates restricts or retards the interstate movement from Florida to Georgia in any degree.

2. The Evidence Proves Conclusively That There is No Actual or Potential Movement of Florida Logs to Georgia

The Division's Report finds that there is no present move-
[fol. 1117] ment of Florida logs to Georgia and that there

has been none. However, the Division, ignoring the evidence, indulged in the following erroneous assumption:

"The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

We must interpret this finding in the light of the scale of maximum reasonable rates prescribed by Division 4. Having that in mind we shall show by reference to the record that the finding above quoted is directly contrary to the evidence offered by numerous expert witnesses and that there is no competent evidence in the record to support the Division's finding.

At the original hearing Witness Simmons admitted that he did not know of any available logs in Florida on the Atlantic Coast Line which could be shipped to Georgia mills. (Record page 86). Witness Jackson testified with respect to the existence of a single tract of timber in Florida, but our witnesses proved conclusively that that tract could not be purchased and used by any Georgia mill. (Record pages 61-65, 693.) Thus, up to the end of the first hearing, it could not be said that complainant had established the possibility of any interstate movement of logs over the Atlantic Coast Line from Florida to Georgia irrespective of any basis of rates that might be established. Later, it tendered Witnesses Davies, Jackson, and Dr. Giddens. Mr. Jackson's attempt to state that there was available timber in Florida was completely overthrown and discountenanced by cross-examination which showed conclusively that there was no basis for his attempt to testify to this effect (Pages 454-459).

[fol. 1118] Q. Mr. Jackson, would this possible source of timber that you speak of in Florida be a large or a small tract?

A. Why it would be made up of small tracts I would say.

Q. Scattered?

A. I do not know of any large tracts; the fact of the business is we have not spent any money looking around down there.

Q. You have never yourself personally investigated the real conditions have you?

A. No, sir (page 472).

The extract above clearly shows the lack of any real foundation for the Division's assumption that there would be a movement of logs from North Florida to Georgia.

Mr. Davies, another witness by whom the Georgia Commission attempted to show possibility of future movement, admitted on cross-examination that "you would not undertake to engage in the establishment of a hardwood lumber business with a supply that would only be good for one year" (page- 424-441). Thus, after attempting to create the impression that he knew of an available supply of timber in Florida, Mr. Davies finally told the whole truth and frankly admitted that the tracts he had in mind were so small that he would not really undertake to engage in the business on the strength of them. Furthermore the witness refused to disclose the location of such supposedly available small tracts, thereby discrediting his testimony in its entirety upon this point. (Rec. page 446.)

Dr. Giddens exhibited from the very outset an unusual display of partisanship and bias. When questioned about his implied reference to certain tracts of timber in Florida the witness was asked to describe the location of any avail- [fol. 1119] able tracts which he had in mind. The witness was thus caught with the inability to substantiate his direct testimony and to save himself from impeachment refused to identify in any respect the location, character or size of any tracts of commercial timber in Florida. (Rec. pages 379, 380, 382, 383.)

Such is the whole testimony of complainant in its vain attempt to create an impression of the availability of Florida timber for shipment to Georgia mills.

### 3. Burden of Proof was Upon Complainant

Attention of the Commission is directed to the fact that Division 4's finding that "The evidence is not convincing that logs could not or would not move from Florida to Georgia," etc., apparently assumes that the burden of proof was upon the defendant and defendant interveners in this case to prove the impossibility or impracticability of any future movement. In this assumption the Division erred as a matter of law. The burden of proof was upon complainant to prove that there was competition between the Georgia mills and the Florida mills and that there was

either actual or potential movement of logs from Florida to Georgia. The extracts from the record above show conclusively that complainant utterly failed to establish the burden of proof in these two vital particulars.

The defendant interveners, notwithstanding that the burden of proof was not met by complainant, did undertake to prove conclusively that, for economic reasons, there is no possibility of any future movement of Florida logs to Georgia. This evidence consisted of the testimony of six competent experts on Florida timber conditions who have first-hand and intimate knowledge of the real conditions. [fol. 1120] The testimony of these six witnesses, the value of which has never been challenged or disputed in any degree, proves conclusively that there is no possibility of any future movement of Florida logs to Georgia, regardless of the measure of the rates which may be established.

Mr. L. C. Crockett, was called to the stand by the intervening defendants, (Rec. p. 790), and was qualified as an expert forest engineer of the highest order. He described his years of experience with, and studies of, Florida timber conditions. Speaking of the availability of supplies of timber in Florida the witness testified as follows:

"The only remaining timber in commercial volume belongs to, and it is being cut by, the large lumber mills in Florida owned by Brooks-Scanlon Corporation, and their associates, Burton Swartz Cypress Company of Florida, the Putnam Lumber Company, * * *. Rec. p. 792.

The witness prepared and introduced a map (Exhibit 44) setting forth accurately the location and ownership of the only timber on the Atlantic Coast Line within 170 miles of Georgia.

Mr. W. E. McCain, of Madison, Florida, was then tendered as a witness. He qualified as a timber cruiser in Florida for twenty five years. (Rec. p. 810). From the fact of his employment by the Brooks-Scanlon Corporation for twenty-five years his competency must be recognized. It is the nature of his work to familiarize himself with conditions as to standing timber in the State of Florida; and from the vantage point of such intimate experience and first-hand acquaintanceship with the facts he testified as follows:

Question. What, in substance, is the situation, Mr. McCain?

[fol. 1121] Answer. It is just as Mr. Crockett has testified; except for two areas which he has shown on his map (one of which is the Eppinger & Russell tract) there is no available Coast Line timber in northern Florida in commercial quantities; there are scattered small pieces owned by settlers or farmers, which we speak of as odds and ends that he may have after his clearing has come in on his land he might own * * * (Rec. p. 810).

Perhaps no more qualified and experienced man could be found in the country to testify as to the availability of Florida timber than Mr. M. J. Scanlon, who was engaged in the manufacture of lumber in Florida, British Columbia, Canada, Washington, Oregon, California, Cuba and the Bahama Islands, and has spent numerous years in constant, intimate and first-hand contact with all phases of the lumber industry in Florida and elsewhere. Mr. Scanlon testified as follows (Rec. pp. 821 et seq.):

Question. So far as you are advised, is all the available commercial timber in the northern portion of Florida gone?

Answer. Yes, sir (Rec. p. 825).

Question. And there is no available timber up there for merchantable purposes that is not already owned by the mills in Florida?

Answer. I don't think so, no sir (Rec. p. 834).

* * * * * * *

Answer. We have down here at Eastport employees in that mill alone, some seven hundred and fifty people; and based on the usual calculation of four and one half to five persons dependent on every man in the employ of an industrial company, we have some thirty-five hundred people in Eastport. They are a happy lot. They are prosperous. They have work every working day in the year that they want to work, and they can't stay on our payrolls unless they do work. We have built homes for them—houses, [fol. 1122] churches, schools, community halls. And I am proud of that town down there! I think it is one of the best manufacturing small towns in the southern States, or the northern States. I don't want to see that destroyed. I

don't want to see that destroyed when there is nothing offered in exchange and nobody who is going to be benefited by changing these rates. I can't imagine what it is all about! (Rec. p. 837.)

Another qualified and experienced lumber manufacturer in Florida, having many years of actual, practical, daily contact with the facts as to timber supply in north Florida, was witness M. L. Fleishel, President of the Putnam Lumber Company—a large concern (Rec. 580). As to the availability of timber in north Florida he testified as follows:

Question. Mr. Fleishel, based upon your own knowledge can you say whether or not there are available for sale to, or purchase by, Georgia operators any merchantable tracts of timber, within 150 miles of the Georgia boundary-line—the Georgia-Florida boundary line?

Answer. Well, if you mean by "merchantable tract of timber" anything more than for a little ground saw mill, I would say absolutely no.

Question. That is what I mean. What size timber tracts would you include in "merchantable" there?

Answer. Anything from six or seven million feet, up.

Question. Mr. Fleishel, will you tell me upon what you base that statement, that there are no merchantable tracts available?

Answer. Well, I think I have been over practically every county in north Florida in the fourteen years I have been here; I did nothing else for the first few years I was here, looking at the timber with a bunch of timber cruisers, looking for first class timber.

[fol. 1123] Question. There is merchantable timber within 150 miles of the Georgia line, is there not?

Answer. Yes, sir.

Question. Why is it not available for sale to, or purchasable by, Georgia mill operators?

Answer. Because it is already owned by these saw mill operators who have big investments in saw mill properties before (Rec. pp. 596-597).

In particular regard to the unavailability of any supply of cypress, Mr. F. H. Wilson, of Palatka, Florida, general manager of the Wilson Cypress Company, testified. Hav-

ing lived and been engaged in the lumber business in Florida since 1891, his qualifications are obvious (Rec. p. 505). As to the complete absence of any such supply of cypress in northern Florida his testimony was as follows:

Q. Do you know of any possible circumstances which now exist or which you can anticipate will exist in the lumber business that would cause or enable substantial shipments or movement of logs from Florida into Georgia?

A. I do not, no sir.

Q. In order that you may give your reasons or the basis for that statement, I will ask you what effect, if any, the supply of commercial timber in Florida has upon the movement or possible movement of logs from Florida into Georgia.

A. To begin with, under present conditions, the supplies of commercial timber in Florida are owned and being developed, by existing lumber companies which have long since established costly mills in Florida, the capacities of which are adjusted to the quantity of timber owned. Therefore, if there were to be capitalists in Georgia having available to them resources for the acquisition of commercial timber supplies in Florida they would be compelled to purchase from one or the other of the large companies now doing business in Florida, and, of course, that would mean purchasing the mills and all the equipment as well as the [fol. 1124] timber itself. That being done it seems impossible to suppose that such a purchaser would dismantle or dispose of the Florida mill which he had already bought, and then construct a new one in Georgia. (Rec. pp. 522-523.)

Q. Mr. Wilson, from your experience as a lumber man, will you state whether there is any body of cypress timber in the northern part of Florida not owned by the Florida cypress mill operators, that could, in your opinion, be logged profitably to any mill, wherever situated?

A. I do not know of any such body, no sir. I should say that practically all of the cypress timber in north Florida is now owned by the present operators operating in Florida; and the remaining part, if there is a small percent of such timber, it is so scattered and inaccessible, and in such small tracts, that the logging of it, even on the Cummer scale, would be practically impossible (Rec. p. 529).

Still another experienced and well qualified man—Mr. J. S. Foley, Vice President of the Brooks-Scanlon Corporation—testified to the same effect (Rec. p. 727), as follows:

Q. Are there any circumstances which now exist, or which, so far as you can judge, will exist, that will cause or enable substantial shipments or movements of logs from Florida to Georgia?

A. No, sir.

Q. Now, why do you make that statement?

A. The supply of commercial stands of timber in Florida are owned and manufactured by lumber companies who have long since built and are operating mills of large capacity in Florida, and are balanced with the amount of timber owned. There is no available timber in any commercial quantity that could be acquired. It would be necessary to purchase the timber from one of those now operating, which would necessarily mean the purchase of the mills [fol. 1125] along with the timber. It would seem improbable that such a purchaser would dismantle or dispose of a mill in Florida which he had already bought, and build a new one at some other location in Georgia (Rec. p. 736).

Such is the state of the record on the unavailability of timber in Florida. When thus presented in the very terms used by the witnesses the evidence proves conclusively that the Division's assumption concerning future interstate movement is in error.

Not only is there no interstate commerce in logs today over the Coast Line from Florida to Georgia; but there will never be any, regardless of freight rates, because there is no timber available for such purpose!

The situation presented by this record is not at all like that involved in the Lum case, 21 I. C. C. 558, the Suffern Grain Case, 22 I. C. C. 178, the Flour City S. S. Case, 24 I. C. C. 179, or the Southern Agricultural Case, 109 I. C. C. 275. In each of such cases the record showed the existence and ownership of a source of supply by the complaining shipper, or, as in the Suffern Grain and the Flour City cases, the proof convinced the Commission that the proposed commercial venture rested upon sound consideration of economics and would meet an established need for elevator and steamship facilities.

Here, however, no such situation is remotely involved. There is no present interstate commerce in logs over the Coast Line from Florida to Georgia; no witness for complaint owns any supply of logs in Florida or ever has shipped any from the one state to the other; no such witness would or could identify the location, kind or size of any tract in Florida thought by him to be available in commercial quantities. As opposed to the casual and unsup- [fol. 1126] ported evidence of Georgia shippers the intervening Florida shippers demonstrated beyond any question of reasonable doubt that there is no available source of timber supply in northern Florida for future shipment to Georgia.

The finding of Division 4 in this particular is a vital error.

In prescribing a basis of maximum reasonable rates from north Florida to Georgia and between Florida points, the Division, apparently, did so under the assumption that there would be a movement in the future. There is no substantial or marked disparity between the scale prescribed by Division 4 from Florida to Georgia and the present interstate scale. The Division has overlooked the fact that the scale prescribed for Florida logs within Florida and from Florida to Georgia is higher than the Georgia intrastate log scale.

The record is convincing that no logs would move from Florida to Georgia under a scale approximating the scale prescribed by Division 4. The following testimony of one of the Georgia witnesses epitomizes the situation in this respect. Mr. Simmons testified as follows:

Question. By Mr. Cotterill: Mr. Simmons, will you answer yes or no to this question: Do you, or do you not ship any logs over the Atlantic Coast Line Railroad from the state of Florida to Bainbridge, Ga.?

Answer. No, I cannot.

Question. I am asking you, do you?

Answer. No.

Question. If the rates on logs within Florida were to be advanced and made as high as the rates on logs from Florida to Georgia, charged by the Atlantic Coast Line R. R. would you be in any better or different position than you are now?

[fol. 1127] Answer. And I had to get my timber supply from that source?

Question. You can answer the question, sir, any way you wish.

Answer. Well, if I had to get my timber supply from that source, I would just quit business, and get out.

Question. In other words, sir, if the rates were to be advanced within Florida to the level of the now existing rates from Florida to Georgia, you would not be aided in any way, whatsoever, would you?

Answer. Not if I had to get my supply of logs that way,—I couldn't navigate,—I couldn't go ahead.

Question. And there would be no movement from Florida to Georgia on such rates?

Answer. I don't think so.

Admissions of the complainant's own witnesses conclusively establishes that the existing difference in the level of the Intrastate rate and the Interstate rate in no wise accounts for the complete absence of Interstate movement from Florida to Georgia. This is true, even if we assume for the sake of argument, that there might be available timber in merchantable quantities.

Every Georgia mill witness produced by the complainant admitted in terms that such such was the fact except one witness, Dr. Giddens.

Examination of Dr. Giddens' testimony not only establishes that this physician's testimony is not competent, but is merely an hostile expression of opinion which he failed to support on direct examination and which, upon cross-examination, was demonstrated to be without any basis in fact. Not a single fact was adduced by the complainant or by anyone at any of the hearings to prove in any way [fol. 1128] that the raising of the Intrastate rate would cause a single log to move from Florida to Georgia.

And so we say that upon the complainant's own evidence (without recourse to the defendants' evidence) the meagre case of the complainant under Section 3 was competely shattered.

The principle of law is clearly established that a mere difference of level between the Interstate rate and Intrastate rate does not confer upon the Interstate Commerce

Commission jurisdiction to increase or otherwise interfere with the Intrastate rate. Interference by the Commission under such circumstances has repeatedly been held to be beyond the jurisdiction, power and authority of the Commission. See American Express Co. v. So. Dak., 244 U. S. 617; Houston etc. Ry. Co. v. U. S. 234 U. S. 342; Illinois Cent. R. R. Co. v. State Commission, 245 U. S. 493; Wisconsin Rate Case, 257 U. S. 493.

Furthermore, the witnesses of the intervening defendants overwhelmingly established the fact that there would be no movement of logs interstate even if merchantable tracts of timber were available in North Florida for shipment into Georgia. The witnesses of the intervening defendants referred to were Crockett, record p. 790; Cummer, record p. 440; Wilson, record p. 505; Scanlon, record p. 820; Foley, record p. 728, and Fleishel, record p. 580.

It is unnecessary here to quote in detail from the testimony of those witnesses. Their testimony at the Jacksonville hearing consumed several days. All of those witnesses had been engaged in the lumber business in Florida for many years. Their testimony carries with it the conviction that comes only from veracity and expert knowledge. We maintain that their testimony conclusively proves not [fol. 1129] only that the level of the Intrastate rates has no bearing upon any potential Interstate traffic but also that even at a materially reduced Interstate rate there would be no movement of logs from Florida to Georgia. And this they demonstrated convincingly for reasons in addition to the fact that there was nc available timber in North Florida in merchantable tracts which could be acquired by any Georgia shipper.

Executives of the intervening defendants all testified that the location of their own mills in Florida, so far away from the supply of timber, has now become an economic disadvantage. They testified that were it not for the enormous cost which would be involved they would unquestionably rebuild their plants at the source of supply.

The emphatic testimony of all the executives of the Florida interveners was that should the Florida intrastate log rates from the forests to the existing mills be increased then, they would be forced to close down their mills, dis-

mantle them completely, and abandon the existing mill towns, stores, churches, schools, etc.

It is that spectacle of disaster which we are faced with under this order of Division 4 without any real or substantial showing of probable gain to the interstate commerce from any point of view. No Georgia interests would be benefited; the Atlantic Coast Line Railroad would completely lose its existing large tonnage of logs over divisions of its line which are now sustained and operated chiefly for and by such traffic; and the Florida interveners would suffer exceptionally large losses.

The testimony of all of the witnesses leaves the very distinct idea that the difference between state and interstate [fol. 1130] rates is not affecting them in any way and that if the Florida intrastate rates are increased "it would not help a bit," as testified by Mr. Jackson.

The fact that there are no Georgia shippers in competition with Florida shippers in this particular traffic, the fact that no Georgia mills seriously contemplate buying or shipping logs from Florida to Georgia, the fact that no timber is available for transportation from Florida to Georgia, and the fact that it is commercially impracticable to ship logs from Florida to Georgia, leaves no fundamental grounds for the finding of undue prejudice against Georgia shippers which Division 4 has made.

The findings should be set aside.

## III.—Division 4's Finding of Unjust Discrimination Against Interstate Commerce is Without Legal Foundation and is Unsupported by Any Evidence Whatsoever

### 1. Complainant's Position, as Defined by it, Relates Solely to the Issue of Prejudice Against Georgia Shippers. Therefore it was Error in Law to Make Any Finding of Unjust Discrimination in This Proceeding

The complainant did not directly attack the level of the Florida intrastate rates, except in their relation to the interstate rates. While section 13 of the Act was referred to in the original printed complaint the Georgia Public Service Commission brought the case and dealt with it throughout solely from the standpoint of alleged undue prejudice to

the Georgia lumber manufacturers and communities in which they do business.

That such was the real attitude of the complainant was made quite apparent from its position on the record. No witness for the complainant remotely endeavored to prove [fol. 1131] that the Florida rates are "less than reasonably compensatory" or that, as a consequence, "interstate commerce" as a whole is subjected to "discrimination." On the contrary, the complainant, through its rate expert, Mr. Price, sought throughout the hearing to make such a record as in its judgment would warrant a finding that the higher interstate rates are unreasonable in violation of Section one.

No witness for the complainant attempted in any manner whatsoever to show any unjust discrimination against interstate commerce.

The complainant defined its own position and in substance restricted its own complaint to the allegation of undue prejudice against individual shippers together with the allegation that the higher interstate rates are unreasonable under Section one of the Act. The complainant did not tender to the Commission any issues as to the compensatory nature of the Florida intrastate rates. Petitioners assert that the record does not show any evidence whatsoever which lays any foundation for the finding of unjust discrimination. Nowhere in its brief does complainant ask the commission to make a finding of unjust discrimination against interstate commerce as such.

2. Burden of Proof on Complainant to Prove Unjust Discrimination Against Interstate Commerce

Division 4 has apparently overlooked the fact that the burden of proof was upon complainant in this case to prove unjust discrimination against interstate commerce if it desired a finding under that allegation. The fact that complainant offered no testimony whatsoever upon this issue warrants the Commission in treating that allegation as [fol. 1132] having been abandoned. The fact that the Division has made a finding under that very allegation without any proof whatsoever in support thereof by complainant renders the finding illegal.

3. Purpose of Defendant's Cost Studies Was Misunderstood, Apparently, by Division 4

The Atlantic Coast Line Railroad Company, on its own initiative, proffered a cost study pertaining to the handling of logs under typical circumstances. Division 4 appears to have entirely missed the point of this evidence. The Atlantic Coast Line Railroad is not a complainant against its own rates on logs in Florida. No case has been brought by such carrier for the purpose of relieving it of its own Florida log rates. On the contrary the Atlantic Coast Line Railroad is a defendant in the case and definitely stated, and adhered throughout to, the position that it was not endeavoring to increase, or procure authority to increase its state rates.

The complainant made no attempt to present a case of discrimination against interstate commerce under that part of Section 13 here discussed, and the cost study of the Atlantic Coast Line Railroad did not go to that question. Defendant having denied in its answer any violation of law, having taken the position that it wished to continue the Florida log rates, and having submitted cost evidence to justify and support its position in respect to continuance of the Florida rates, the cost study should not be construed by the Commission as reviving the issue of unjust discrimination against interstate commerce after complainant had, in substance, abandoned that issue.

Plainly, the introduction of such cost calculations as well as other evidence of the Atlantic Coast Line was for an entirely different purpose.

[fol. 1133] Under the allegations of undue prejudice against Georgia lumber manufacturers the Atlantic Coast Line only dealt with the "reasonableness" of both the intrastate and interstate log rates involved. It defended its interstate rates against material reductions and it also defended the continuance of its intrastate rates. It appears, however, that Division 4 erroneously supposed that such cost calculations and other evidence of the Atlantic Coast Line bore upon an issue of "discrimination against interstate commerce." Indulging such erroneous assumption,

Division 4 concluded that the "Florida rates assailed * * * are not reasonably compensatory" and entered an order in terms undertaking to compel very material increases in intrastate rates. Thus Division 4 has erroneously treated the case as not being limited to an issue of undue prejudice against particular shippers and localities in Georgia, but as involving the necessity of considering whether or not the Florida state rates assailed are "reasonably compensatory." The Division has assumed that a finding to the contrary was a complete and self-sufficient foundation for its finding of unjust discrimination against interstate commerce.

The Railroad Commission undertook to revise certain material aspects of the cost calculations which were submitted by the Atlantic Coast Line, employing the railroad data. In doing so the Florida Railroad Commission did not attempt to and could not have revived the issue of unjust discrimination.

Upon this analysis of the situation, therefore it must be evident that Division 4 has erred in the assumption that this case involves more than an inquiry as to whether "undue prejudice and disadvantage" against Georgia shippers and localities exists. It appears to have assumed that the case [fol. 1134] involved the necessity and propriety of determining whether the Florida state rates were reasonably compensatory; and it further assumed erroneously that a finding in the negative sufficed to support an order under Section 13 compelling a material increase in such state rates. Apparently Division 4 has completely overlooked or ignored the fact that, if the complainant had desired to press the issue of unjust discrimination (which complainant did not do), the burden of proof was upon complainant to show that the Florida rates were not reasonably compensatory. Complainant offered not one shred of evidence, and made no attempt whatsoever, to prove that the Florida rates were not reasonably compensatory. Division 4 has inadvertently assumed, in error, that the burden of proof was upon the defendant.

These cost studies show that defendant is warranted in continuing the Florida intrastate rates from northern Florida points to Florida mills in view of the enormous amount of revenue which it receives from this particular traffic.

The cost evidence further serves to justify the defendant in carrying a different level of rates from Florida to Georgia points, where no movement can exist, than from north Florida timber tracts to north Florida mills, where the movement is enormous. This evidence, and the revision thereof, offered by the Florida Commission's experts, stand unchallenged upon this record. The finding of Division 4 that the Florida rates are less than reasonably compensatory is therefore without any evidence whatsoever to support it.

The Division's finding of unjust discrimination against interstate commerce is therefore illegal.

[fol. 1135] 4. The Division's Order Would Destroy Intrastate Traffic

Based upon undisputed and unchallenged evidence, the following correct finding appears in Division 4's report:

"Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic."

Despite such uncontradicted testimony, and despite its apparent acceptance by Division 4 as establishing a conclusion, the legal significance thereof appears to have been overlooked. It seems to have been supposed by the members of Division 4 that Section 13 of the Act empowers it to compel a material increase in state rates, although the evidence conclusively shows that the particular intrastate traffic to which such rates apply would immediately thereafter cease to exist.

It is virtually self-evident that the unjust discrimination clause of Section 13 does not contemplate that this be done. If it were to be thought that the present case involves inquiry of that nature under Section 13 the proof conclusively establishes that no interstate commerce would be created, and no revenue gain to the Atlantic Coast Line would ensue by reason of an increase in the Florida state rates. Hence from the standpoint of such provision of law it cannot be held in this case that there exists any permissible basis

under Section 13 for an increase in the state charges. Exercising its managerial function, the Atlantic Coast Line perfers to continue such rates in effect and makes no com- [fol. 1136] plaint to this Commission in regard thereto. Since an increase in the Florida rates would kill the intrastate traffic to which such rates apply, no possible gain to the Coast Line could ensue, and therefore for this additional reason, the Commission is without power to make such an order.

Conclusion

The Georgia Public Service Commission has proclaimed publicly and in this record that to bring about rates from Florida to Georgia substantially the same in amount as the prevailing "Cummer scale" in Florida is the object of this proceeding.

It has however, prosecuted the case against the objection of and over the protest of all but a few lumber mills in the state of Georgia. It has set forth in this record that inspiration for the case came to it when complaint was made against the proposal of the Georgia Commission to materially advance its own intrastate rates on logs in Georgia. According to Witness Price, such complaint from Georgia manufacturers was based upon a comparison between the proposed increased rates on logs within Georgia and the prevailing intrastate rates in Florida. Therefore, it was conceived that the case should be brought in order to reduce the interstate rates from Florida to Georgia on the supposition that by doing so some gain to Georgia lumber manufacturers would ensue.

But the substantial absence of any support of the complaint was demonstrated by the fact that when the case began the Georgia Public Service Commission did not have [fol. 1137] available to it one single Georgia lumber interest to testify for it as a witness. When the case was first submitted merely upon evidence of Witness Price, consisting of a comparison of the interstate and state rates involved, it was about to be closed without any testimony from any other Georgia interests whatsoever. Then, on their own account, when two men from Georgia asked permission of the Examiner to testify in their own behalf, counsel for the complainant introduced them without even

claiming them as witnesses for the Georgia Public Service Commission.

It was not until after intervening shipper defendants recorded and were respectfully insisting upon the privilege of argument in support of their motion to dismiss that counsel for the Georgia Public Service Commission appeared to realize the complete legal insufficiency of the case. He thereafter sought leave to and succeeded in submitting further direct evidence at an additional hearing. At Jacksonville the testimony of three other witnesses was given in its behalf. Their testimony wholly fails to support any of the allegations of the complaint.

Such is the case. As expressed by Mr. Scanlon: "What is it all about?" Who would gain, and in what way, by such a ruthless destruction of large investments in Florida which are furnishing opportunities of employment to thousands of persons whose homes are at stake as well!

Petitioners therefore pray that the order of Division 4 in this case be vacated and set aside, that an order be entered assigning this case for re-argument and reconsideration and that when such re-argument and re-consideration shall have been had the Commission make and enter an [fols. 1138 & 1139] order dismissing the case in so far as the issues of undue prejudice and discrimination are concerned.

Respectfully submitted.

Brooks-Scanlon Corporation, by Geo. L. Rutherford, Attorney. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Jacksonville Traffic Bureau, Inc., by J. O. Cassidy, Attorney. Southeastern Forest Products Association, Successors to Georgia- Florida Saw Mill Association, by J. S. Farish, Traffic Manager. Southern Cypress Mfgrs. Asso., T. M. True, Traffic Manager. Southern Pine Association, by A. G. T. Moore, Traffic Manager. Chas. E. Cotterill, of Counsel.

Dated at Jacksonville, Fla., September 26, 1928.

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[fol. 1142] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REARGUMENT AND RECONSIDERATION ON BEHALF OF RAILROAD COMMISSION, STATE OF FLORIDA

To the Interstate Commerce Commission, Washington, D. C.

General Statement

This Petition is filed on behalf of the Railroad Commission, State of Florida, and the people of the State of Florida.

This case was brought by the Georgia Public Service Commission, and not by any shipper or user of logs in Georgia; hearings were held; briefs were filed; and a proposed report, by Examiner R. M. Brown, was served upon the parties.

The Examiner recommended that the Interstate rates on logs from points in the northern fringe of Florida, over [fol. 1143] the Atlantic Coast Line Railroad to local points in Georgia, for distances up to 170 miles should be those voluntarily proposed by the sole defendant. No exceptions were taken to that proposed finding on the part of any Florida interests, or any Georgia mills.

(1). The Examiner also recommended that the Commission find that "the Florida intrastate rates assailed have not been shown to cause undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, or undue, unreasonable, or unjust discrimination against interstate commerce."

No exceptions thereto were filed by any Georgia shippers or mills.

The Examiner's conclusions were satisfactory to the Florida interests, and were supported by the facts.

Argument was heard before Commissioners Eastman and Woodlock, sitting as Division 4 of the Commission.

(2). A decision, rendered by Division 4, Commissioners Meyer, Eastman and Woodlock, was served upon us about the middle of August, 1928. In this decision the Division has adopted the Examiner's recommendation with respect

to defendant's voluntary scale of interstate rates to be applied in the future from points in the northern fringe of Florida to Georgia mills over the Atlantic Coast Line, but has reversed the Examiner's conclusions with respect to the issue of undue prejudice and unjust discrimination.

(3) In this petition the Railroad Commission, State of Florida, and the State of Florida, pray, that the Commission reconsider this case and revoke the order of Division— with respect to the findings of fact and conclusions which [fol. 1144] differ from these found and recommended by the Examiner under the issues of undue prejudice and unjust discrimination.

## II. General Grounds of Petition

The general grounds of this Prayer for Reconsideration are as follows:

(1) That the Division's report contains vital errors of fact and states certain assumptions of fact, which in some respects are directly contrary to the evidence and in others are wholly unsupported by evidence.

(2) That the Division's report states conclusions with respect to the allegations of undue prejudice which are contrary to the evidence, and with respect to the allegations of unjust discrimination which are wholly unsupported by any evidence, and all of which are without legal foundation.

(3) That the order of Division 4, would not benefit any interstate shipper, but would subject Florida shippers to irreparable injury; and would not aid, enlarge or develop interstate commerce, but would destroy intrastate commerce.

(4) That the order of Division 4, is an unwarranted and unnecessary attempt to exercise general regulatory federal power over traffic which is subject to the laws and regulations of the State of Florida.

(5) In order that consideration may be given to the facts and arguments to be offered in support of the general grounds of this Prayer for Review, Petitioners ask that an order be entered in this proceeding, revoking the order of

Division 4, insofar as it affects Florida intrastate rates, and re-opening the case in order that re-argument may be had before the entire Commission, and in order that there- [fol. 1145] after the entire Commission may Reconsider the evidence with respect to the issues of undue prejudice and unjust discrimination.

Petitioners do not ask that the order of Division 4, insofar as it prescribes rates from points in the northern fringe of Florida over the Atlantic Coast Line to points in Georgia, be stayed or deferred. Petitioners are not opposing reductions in interstate rates on logs from points in North Florida to Georgia.

## III. Errors of Fact

### 1. Georgia Mills Oppose the Complaint

Near the middle of sheet 2 of the report of Division 4 is the statement that:

"At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed." etc.

This statement is incorrect. The following correct statement is found on sheet 3 of the Examiner's proposed report:

"During the course of the hearing the Florida interveners, the Florida Commission, and others interested in maintaining the present level of the Florida rates, moved that the compalint be dismissed." etc.

Attention is directed to the fact that the motion for dismissal was concurred in and made on behalf of the Georgia-Florida Saw Mill Association, Southern Pine Association and the Southern Cypress Manufacturers Association. Included among these are many, and practically all of the pine and cypress mill owners in Southern Georgia. Evidently Division 4 has overlooked the fact that the complaint [fol. 1146] does not name a single Georgia mill operator on whose behalf the complaint was filed. The fact that practically all of the Georgia mills joined in the motion to dismiss this case is entitled to great evidentiary weight. It

clearly indicates the utter lack of any actual or potential competition, which would be necessary to support the allegations of undue prejudice and unjust discrimination. The fact that practically all of these Georgia mills actually came forward and opposed the complaint, which ostensibly had been brought on their behalf, is significant, striking and unusual. The fact that the Georgia Commission brought this complaint, without bringing to the original hearing, a single Georgia mill owner as a witness in behalf of the complaint, and the fact that the Georgia Commission closed its case in chief at the original hearing without offering a single solitary log shipper as a witness, (other than its rate expert,) to testify concerning alleged competition and undue prejudice, apparently have been overlooked by Division 4. These facts constitute a prima facie case of the absence of competition and the absence of any real or substantial prejudice or discrimination.

The fact, that the motion to dismiss was denied, is not important at this time, but the fact that practically all of the Georgia mills opposed the complaint and sought to have it dismissed for lack of evidence, should receive careful consideration by the Interstate Commerce Commission before it proceeds under these unusual circumstances, to exercise jurisdiction over Florida intrastate commerce.

2. History of Florida Rates is Distorted

On sheet 3 of the Division's report is the following erroneous statement of fact:

"That (Florida) Commission refused to permit the pro- [fol. 1147] posed (Florida intrastate A. C. L.) rates to become effective because they were published to apply only on train loads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory."

The facts in regard to the Florida Commission's action were correctly stated on sheet 4 of the Examiner's proposed report as follows.

"That Commission refused to permit the proposed rates to become effective, as they were applicable only when the

movement was in trainloads, and were not available to all Florida intrastate log shippers. To meet these objections defendant published rates on the Cummer scale basis, effective October 30th, 1914." etc.

The report of Division 4 in changing this language of the Examiner's report, apparently ignored entirely the full discussion of this subject which appears in our brief on pages 2, 3, 4 and 5. We directed attention to the fact that the Florida Commission did not find or advise defendant "that the rates themselves were too low and such as might be deemed confiscatory." We now direct attention again to the concluding sentence on this point at page 5 of our brief, which is as follows:

"But this Commission (Florida) does unqualifiedly take the position that these rates as applied in Florida, and over which it has jurisdiction, have its full approval."

Unfair attempts to distort the history of the Florida A. C. L. log rates were made in this proceeding, and these attempts have apparently given Division 4 an erroneous conception of the facts. We ask that the Interstate Commerce [fol 1148] Commission give due consideration to the true statement of facts which appears in the Examiner's report. The Florida Commission's position, as stated in our Brief, is based upon the fact that the predominant movement of logs, intrastate, over the Coast Line in the northern fringe of Florida is in trainloads, which fact results in unusually low costs of transportation.

3. Division 4 Misunderstood Defendant's Position

On sheet 3 of the Division's report, the following statement is made:

"Defendant does not consider the intrastate rates reasonably compensatory." etc.

The following statement of defendant's position will be found on page 4 of their brief and in a statement of Defendant's chief Counsel, Mr. C. H. Davis, at page 903, as follows:

"While our testimony has been directed towards showing that these rates (Florida intrastate) are relatively low and in and of themselves low, we have not made and are not making any proposal to revise them. We have undertaken to justify the original establishment of these rates for trainload movements," etc.

Regardless of any extemporaneous statements which may have been made at oral argument (a copy of which is not available to us at this time) there can be no doubt that this quotation from the record is the correct statement of defendant's position.

4. Defendant Justified its Intrastate Rates

We direct attention to the fact that defendant states these rates are "relatively low," and that Defendant has "under-[fol. 1149] taken to justify" these Florida rates for trainload movements. The predominant movement in the northern fringe of Florida is in trainloads. Defendant's cost figures, and the revision thereof as made by the Florida Commission's experts, fully support defendant's justification of the Florida rates under consideration as being compensatory. Division 4 has brushed aside the evidence of defendant and the Florida Commission's experts, and has overruled the express finding in the Examiner's proposed report, that:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory."

Attention is directed to the fact that the Examiner's findings agree with defendant's contention that the rates are "relatively low," and that the rates are justified as reasonably compensatory for the traffic in question (which is usually in trainloads) in the northern fringe of Florida.

5. Division 4 Errs in Overruling Examiner's Finding That Florida Intrastate Rates are Reasonably Compensatory

The findings of Division 4, that the Florida rates in issue are "less than reasonably compensatory" (sheet 6) is un-

supported by any evidence offered by any complainant whatsoever, and directly contrary to the justification offered by defendants and the supporting evidence offered by the experts of the Flor-da Commission. The Examiner's finding in this respect should be affirmed by the Commission, and the finding of Division 4 should be reversed.

[fol. 1150] On Sheet 6 of the Division's report the statement is made that:

"It is manifest, we believe, that the intrastate rates assailed are less than reasonably compensatory." This finding is directly contrary to the Examiner's finding that the rates assailed are "reasonably compensatory."

Apparently the Division, in reversing the Examiner upon this important point, was influenced by the erroneous findings hereinbefore discussed, including the error concerning the Florida Commission's attitude towards the Florida rates, and the misunderstanding concerning the position of the defendant Atlantic Coast Line. Another factor, which apparently influenced the Division 4 in this reversal of the Examiner's express finding is found in the treatment in the Division's report of the evidence of the costs of transportation offered by Defendant and the revision thereof as made by the Florida Commission's experts.

6. Cost Evidence of Florida Commission Condemned Unwarrantedly by Division 4

Defendant offered in evidence special cost studies of this traffic, based upon representative hauls and representative volume of traffic. No one assailed the accuracy of the defendant's cost studies as being too low. The Florida Commission's experts on the other hand did undertake to show that, taking defendant's own studies and figures, it could well afford to transport logs from the northern fringe of Florida to Jacksonville in trainloads at the present rates and still leave a god margin to spare, over and above the expenses of this service. Florida shippers proved that the vast preponderance of the North Florida movement is in [fol. 1151] trainloads. Complainant has not even attempted to assail the revised cost figures of the A. C. L. study which the Florida Commission's experts offered in evidence. In

discussing this evidence the report of Division 4 states, on sheet 5, that:

"Neither (the A. C. L.'s figures, and the Florida Commission's revision thereof) can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida."

The Division's ground for this finding is that:

"Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination."

What is wrong with these revised cost studies? All cost studies must rest upon certain arbitrary allocations. What is wrong with the taking of these two points of origin and one destination? Has any one questioned the fact that these two points of origin and one destination are not only representative but also are fairly typical of the vast preponderance of the actual movement from the northern fringe of Florida to the principal consuming mills in north Florida? What other representative point of origin and destination would serve to convey so fair an average picture of the actual condition as these?

With respect to the Division's statement that neither of these cost studies "can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida" we direct attention to the fact that the cost studies were not offered for this purpose. The evidence in this case was confined to the northern fringe of Florida, in accord with the issues of this case, as defined and [fol. 1152] restricted at the hearings. Apparently the Division assumed in error that it was incumbent upon defendant and the Florida Commission to base their studies on movements of logs throughout the state. The Division has overlooked the fact that the evidence deals with only a small part of the State of Florida where the log traffic on the A. C. L. is far greater than "throughout the State" as a whole, and is almost entirely in trainloads.

Rates on logs which might be just and reasonable for general application throughout the State would be unreasonably high between points of actual movement in the

northern fringe of Florida where the log traffic density is so unusually and remarkably great.

7. New Cost Studies Would Have Been Appropriate

If the Commission was not satisfied with the cost studies of defendant or the revised figures of the Florida Commission's experts, it could have informed us of a method of ascertaining the costs of the transportation under consideration which would have been satisfactory to it, instead of discrediting our accounting evidence in this summary manner.

8. Transportation Services, Intrastate, Differ from Interstate

On sheet 7 of the report of Division 4 the finding of fact is made that the:

"transportation services in each instance (under the scale of rates prescribed by Division 4 for interstate and intrastate application) are performed by defendant under substantially similar circumstances and conditions."

[fol. 1153] In making this finding the Division apparently has in mind the general conditions in Georgia and Florida relating to all traffic as a whole over all lines. Apparently the Division has overlooked the following facts: That, this case brings in question only the rates on logs in the northern fringe of Florida; that the intrastate movement between points in the northern fringe of Florida is enormous, and has been for years; that the movement to one mill alone exceeded 128,000 carloads; that the predominating ordinary and usual movement from the timber in the northern fringe of Florida to Jacksonville is so great that it consists of entire trainloads of logs; that the cost of transporting each carload are thereby reduced to an unusually low figure; and that, on the other hand, there is no interstate movement from North-Florida to Georgia. For commercial reasons of supply, demand, cost of manufacture, lack of purchasable timber, and longer hauls from the same timber tracts to Georgia mills, there is no practicable possibility of there being any interstate movement from the northern fringe of Florida to Georgia mills.

The Division apparently has overlooked the fact that it is no longer feasible or practicable to ship logs for distances as great as those from points such as Gainesville, Fla., to Valdosta, Ga., regardless of the relationship of rates, for the reason stated in the Division's report, that the "successful exploitation (of small timber tracts) because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber." If the prescribed rates go into effect, there will be neither interstate nor intrastate movement thereunder. This fact is clearly proven and will be discussed later.

[fol. 1154] 9. Enormous Volume of Movement Warrants Low Commodity Rates

As we understand the decisions of the Interstate Commerce Commission that body has always given due regard to the lessened costs of transportation in inverse proportion to the volume of the movement and has consistently adhered to the rate-making principal that it is the greater volume of movement which warrants the establishment of commodity rates between certain points, where the traffic is heavy, and the application of class rates where the traffic is light, sporadic or occasional. In other words, volume of movement has always been one of the vital points to be considered in deciding whether transportation conditions are substantially similar or not. Why has Division 4 failed to give consideration to the most striking feature of this case, namely, the difference in transportation conditions due to the enormous movement of logs over defendant's line to Jacksonville, intrastate, and the total absence of actual or potential interstate movement from the same Florida points on defendant's line in Florida to any Georgia mills?

This extreme divergence in transportation conditions in Northern-Florida-log-traffic, as compared with interstate-north-Florida-to-Georgia traffic, warranted a wide difference between the intrastate rates to Florida mills and the interstate rates to Georgia bills. The difference in volume of movement, actual and potential, is so great that defendant would be warranted in applying the class rates on any sporadic interstate shipment of logs which might happen to

move from Florida points over the A. C. L. to any Georgia mill.

[fol. 1155] IV. Erroneous Assumptions of Fact

1. No Actual or Potential Movement to Georgia

On sheet 5 of Division's report are statements which indicate clearly that the Division has misunderstood the evidence and has entertained certain assumptions which are not in accordance with the proven facts.

"No movement from Florida to Georgia is shown and complainant states that there can be none because of the substantially higher level of the rates interstate than intrastate."

The Examiner's report correctly stated, on sheet 7, that:

"No movement under the interstate rates was shown and complainant admits that there is none."

Attention is directed to the fact that the Examiner correctly stated that no interstate movement was shown and complainant admists that there is none. In other words, his findings make it clear that this complaint deals with so-called paper rates and paper prejudice so far as the interstate rates and Georgia mills are concerned.

It is clear that the Division has drawn an erroneous assumption from the testimony of the Georgia Commission's rate expert, Mr. Price. On page 16 of the record Mr. Price was questioned about the movement of logs interstate from Florida to Georgia, and he testified:

"No, I do not know, of my own knowledge, but from the investigations I have made I do not think it possible for there to be any extensive movement."

Now, Division 4 has assumed that he meant that if the rates within Florida were increased to the interstate level [fol. 1156] that there would be an interstate movement. This assumption is clearly in error. Mr. Price's testimony very fairly and frankly shows that he has made no investigation whatsoever as to the actual movement, existing or portential. He frankly states that his investigations

consisted of making exhibits of comparisons of rates for this case (page 16 of the record). The correct assumption from this evidence which is borne out in other parts of the record, is that the Georgia Commission, in bringing this complaint made no investigation whatsoever to determine whether there could be any interstate movement under any scale of maximum reasonable rates from the northern fringe of Florida to south Georgia. If the Georgia Commission had made such an investigation we feel satisfied that this complaint would never have been brought because the uncontroverted testimony of many other competent witnesses in this case shows conclusively that there is no actual movement and that there could not be any potential movement.

2. Lack of Purchase Timber Precludes Potential Movement

The lack of available timber adjacent to the Atlantic Coast Line in north Florida which could be purchased by Georgia, or any other mills, and the inability of any mill to pay the transportation charges on logs for a haul as long as from such points as Gainesville, Fla., to Valdosta, Ga., for example, and operate at a profit, precludes the possibility of any actual movement under the present rates or any potential movement under the so-called Alabama scale prescribed by Division 4.

These facts, which are conclusively shown of record, illus- [fol. 1157] trate forcibly the error in the assumption by Division 4 that the lack of movement is due to the "higher level of the rates interstate than intrastate".

The Examiner's report, sheet 8, correctly states that:

"All but one (of the Georgia shippers) admitted that an increase in the Florida rates would not benefit them, and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates.

In regard to the available supply of timber adjacent to the Atlantic Coast Line for shipment from Florida to Georgia mills, the Examiner's report stated, on sheet 8 that:

"They (Georgia witnesses) stated, in general terms, that there is available timber in Florida which would be economically purchased and transported over defendant's line

to their mills in Georgia if reasonable interstate rates were published."

but the Examiner's report goes on with the following pertinent comment, that: "The location or quantity of such timber was not revealed." This comment refers to those parts of the record in which the Florida interests and intervening Georgia mill interests challenged these trumped-up witnesses to back up their biased statements with specific proof of the location of the timber or the quantity thereof which could be purchased by them and transported over the Atlantic Coast Line to a Georgia mill. Not one of these witnesses could meet this challenge. Therefore, if the record is properly understood the Examiner's comment will also be understood to mean that the statements "in general terms" of these few Georgia witnesses have absolutely no [fol. 1158] evidentiary value. Furthermore, attention is directed to the fact that not one of these Georgia witnesses testified that he could buy or would even be in the market for Florida logs adjacent to the Atlantic Coast Line if the rates should be changed.

The Division's statement on sheet 5 of its report, that:

"Some of them testified that there is available timber in Florida which could be economically purchased and transported over defendant's line to Georgia mills if the rates were reasonable."

leaves out the Examiner's fair and warranted comment, that: "The location or quantity of such timber was not revealed." In other words, the Division has accepted the trumped-up and unfounded statements of these few Georgia witnesses, and has failed to understand the cross-examination which showed conclusively that these statements are not based on fact or investigation.

A fair and unbiased reading of the record is convincing that these witnesses, referred to in the above quoted passage, had in mind that probably they might have been able to buy some Florida timber and they might have been able to ship it to Georgia mills if they had had rates no higher than the so-called Cummer scale. All except one unimportant Georgia witness frankly agreed that there could be no shipments from Florida to Georgia, even if they could

buy timber under a rate-level even approximating the then existing interstate rates. In view of the fact that the interstate rates prescribed by the Commission are not substantially less than the interstate rates in effect prior to that date, the logical presumption of fact is that these same witnesses, if recalled to the stand, would testify that there [fol. 1159] is no possibility of interstate movement of logs from Florida to Georgia under the rate-level prescribed by Division 4, even if any timber were available.

The testimony of numerous witnesses which overwhelmingly impeaches and refutes the testimony of unreliable witnesses has been disregarded by Division 4.

3. Florida Witnesses Prove Conclusively That There is no Available Florida Timber

The fact that the Division has omitted from its report the following finding of the Examiner shows clearly to our minds that the Division was not fully informed of the facts. The Examiner's report on sheet 12 states that:

"Several experienced Florida operators and timber cruisers were emphatic in their assertions that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills."

The sentence which follows the above, in regard to the "few" scattered areas of timber in north Florida held largely by farmers for their personal requirements, was retained in the Division's report, but the above quoted portion of the Examiner's report was deleted from the Division's report. We regard this failure to include the above quoted sentence, (proving the absence of timber for interstate movement) as an extremely unfortunate error in view of the fact that the Florida lumber interests brought a number of expert witnesses to the hearing in order that this important, striking, and unusual fact might be fully proven. The fact has been proven and without question. The fact is vital in that:

[fol. 1160] 4. No Prejudice or Discrimination Can Exist Where There is no Possibility of Present or Future Interstate Movement

It was error to omit the above quoted finding of the Examiner, and the following, on sheet 13 of his proposed report:

"The evidence is convincing that few logs would be transported to Georgia over Defendant's line if complainant were accorded interstate rates on the same level as the Cummer scale. It is probable that few, if any, logs would be hauled to Georgia under the present interstate rates if the Florida rates were increased to the level of such rates."

These findings of the Examiner are fully and convincingly supported by competent evidence of expert and experienced witnesses. There is no evidence to the contrary which can be given serious consideration.

If the Interstate Commerce Commission has any doubt in its mind whether there would be any movement from northern Florida points over the Atlantic Coast Line to any Georgia mill served by that line under the scale of rates prescribed by Division 4, then Petitioners ask that they be allowed an opportunity, at further hearing, to offer evidence which will prove conclusively that there is no remote possibility of any interstate movement whatsoever under the scale prescribed by division 4. This should be unnecessary because the complainant, upon whom the burden of proof rests, has utterly failed to prove that there would be any actual or potential movement under the present rates under the Florida intra-state scale of the Coast Line, or under the scale prescribed by Division 4.

Furthermore, Division 4 has overlooked express findings in its own report that:

[fol. 1161] "While there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements (not necessarily served by the single defendant in this case) successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber" (sheet 6).

A careful study of the evidence in this record will readily convince the Interstate Commerce Commission of the striking and peculiar characteristic which differentiates this case from the ordinary rate-relationship case, namely, the fact that:

There is no present or potential movement of logs from the Northern fringe of Florida over defendant's line to any Georgia mills. There is no such movement today, and due to extraordinary conditions, any future movement, regardless of what rates may be prescribed as just and reasonable, is precluded from the realm of possibility by economic conditions other than transportation charges.

V. Division 4's Conclusions Respecting the Issues of Undue Prejudice and Unjust Discrimination are Unsupported by Any Competent Evidence, and Without Legal Foundation.

The conclusion of Division 4, on Sheet 7 of its report that:

"The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within [fol. 1162] the state of Florida, in undue prejudice to shippers of interstate traffic from points in the state of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce."

is unsupported by any competent evidence, is contrary to undisputed evidence, is beyond the scope of the proceeding as defined and restricted at the hearing, is without legal foundation, and is an unwarranted invasion of State's rights.

Proof of Actual Competition is a Condition Precedent to a Finding of Undue Prejudice

The finding of undue prejudice against shippers of interstate traffic from northern Florida points to Georgia mills has no legal foundation in fact or in law. As we understand the Commission's decisions, and those interpreted by the

courts, a finding of undue prejudice against shippers, or persons, must be supported by specific findings of fact naming the persons who are preferred and the persons who are prejudiced. Unless there is some prejudiced shipper or person who is engaged in actual competition with the alleged preferred shipper or person, the allegation of undue prejudice against persons must fall. Applying this principal to the facts of this case it is clear that the Division's report, and the record, utterly fail to disclose a single shipper or person, engaged in the interstate shipment of logs, who actually competes with any single shipper or person engaged in the intrastate shipment of logs. The complainant in this case made no attempt whatsoever to offer specific proof of any instance where a Georgia mill had ever, or would ever, compete with any Florida mill in the purchase and shipment of logs from any point in Florida.
[fol. 1163] Under these circumstances, where can there be any finding of competition which is essential to a legal foundation for a finding of undue prejudice?

A second condition precedent to a legal finding of undue prejudice is actual or potential movement of the commodity or traffic in question from the common points of origin to the alleged prejudiced destinations, as well as the alleged preferred destinations. In other words, there must be some real and substantial movement of the traffic, either existing or in prospect of movement.

The evidence in this record clearly shows that there is no present movement of logs from Florida to Georgia. Therefore, it was incumbent upon comp-ainant to prove that there is some real prospect of movement. The evidence clearly proves that there is no real prospect of movement. Complainant did not attempt to prove that there would or could be any. On the other hand, witnesses representing many mills in Georgia as well as Florida, overwhelmingly proved, by the aid of experts in this field, that there is no timber in Florida available for interstate shipment to Georgia, and other witnesses proved that no logs would move from Florida into Georgia even if the interstate rates should be reduced to the level of the Florida intrastate rates. (See Findings in the Examiner's proposed report.)

Any finding of undue prejudice of no shippers where there is not and could not be any traffic, would be manifestly illegal, and without legal foundation.

In Hunter Bros. Mercantile Co. v. American Ry. Express [fol. 1164] Co., 107 I. C. C. 313, the Commission said:

"The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The record conclusively proves that the Florida intrastate rates do not affect any Georgia shippers injuriously to any material extent. The record in this case goes even farther and shows that no Georgia shipper could possibly be affected by any change in the log rates from Florida points to Florida mills. On the other hand, and, as stated in the Examiner's proposed report,

"and material increase in the Florida rates will either cause them to move their plants to the timber or abandon operations. In either event defendant would lose considerable log traffic, the extent of which cannot be readily estimated. It is doubtful if increased Florida rates would compensate defendant for the loss of such traffic."

The facts of record warrant the conclusion at this time that no logs would move from north Florida to Georgia under the scale of rates prescribed by Division 4 and that the increase in the Florida rates to that level would immediately stop the intrastate movement of logs from north Florida to Jacksonville mills. This is due to the fact that the tracts of timber at short haul points have been exhausted, and it is financially impracticable to haul logs for the longer distances under the rates prescribed by Division 4.

Petitioners contend that the Division's conclusion of undue prejudice under section 3 of the Act is unlawful and unsupported by any competent evidence. The following conclusions of the Examiner are based upon competent evidence:

[fol. 1165] "The evidence upon this record does not establish the existence of undue preference of Florida intrastate shippers or localities or undue prejudice of Georgia Interstate shippers or localities under the rates in issue. • • • No specific instance of hurtful discrimination or prejudice has been shown to result from the maintenance of the Florida rates. Testimony for complainant is to the effect

that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking. A finding of unlawful discrimination or undue prejudice cannot be predicted on a mere assumption or assertion of their existence."

Petitioners therefore allege that the finding of undue prejudice of Georgia shippers and undue preference of Florida shippers is unlawful and without legal foundation in that it is unsupported by any competent evidence and is contrary to undisputed evidence, in that two conditions precedent to such a finding, namely, competition, and actual or potential movement, are proven to be wholly lacking.

## VI. Division 4's Findings of Unjust Discrimination Against Interstate Commerce is Without Foundation

The Division's Conclusion, on sheet 7, that the Florida intrastate rates assailed result in unjust discrimination against interstate commerce, is not explained in the report on any ground other than the erroneous finding that the Florida rates assailed are "less than reasonably compensatory."

We have commented at length upon the evidence bearing upon the compensatory feature of the Florida intrastate rates. If the Division's conclusion is based upon the finding of fact that the Florida rates are not compensatory, [fol. 1166] then the conclusion is based on errors of fact and contrary to the evidence and should be reversed. If the Division's conclusion is not based upon that finding, then it is manifestly unsupported by any competent evidence and, in addition is beyond the scope of the proceeding in several vital particulars. For example, complainant offered no testimony whatsoever on this question and the issue was practically abandoned.

### 1. No Interstate Shipper is Hurt

It is inconceivable that the Interstate Commerce Commission should reach this conclusion without any substantial evidence in support thereof, and without a real and substantial showing that the Florida rates affect some real, tangible "interstate commerce injuriously to a material ex-

tent." (Hunter Bros. Mercantile Co. v. A. Ry. Ex. Co. supra). The Interstate Commerce Commission, of course, would not knowingly use an indefinite conclusion of this kind, without satisfactory explanation of the specific injury which would result from the Intrastate rates, as a mere cloak under which to hide substantial defects in pleadings and evidence, in order that the Commission might attempt to exercise its federal authority over purely intrastate traffic.

2. I. C. C. Has No General Regulatory Power Over Intrastate Rates

In the Wisconsin Rate Case, 257 U. S. 563, the Supreme Court of the United States said that its conclusions did not give the Interstate Commerce Commission "unified control of interstate and intrastate commerce," and "does not in- [fol. 1167] volve general regulation of intrastate commerce." Action by the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction, to interstate commerce.

The evidence in this case, hereinbefore discussed, clearly shows that there is no real discrimination against, or obstruction to interstate commerce proven in this case. No Georgia mill owner testified to any real discrimination against him. Many Georgia mill owners opposed the complaint on the ground that there was no real discrimination against or obstruction to interstate commerce. No interstate commerce would be built up under the conclusions of Division 4. Defendants would merely lose tonnage and revenue from intrastate traffic and defendant is not asking for any relief from any burden of intrastate rates, as is usual in the Shreveport cases; Houston & Texas Ry. v. United States 234 U. S. 342.

3. Finding of Unjust Discrimination is Legally Unsound

The Division's conclusion, with respect to unjust discrimination of interstate commerce, is unsound as a matter of law, as well as being contrary to the evidence, and is an unwarranted attempt to exercise Federal authority over State Rates.

If, under the facts and conditions of this proceeding the Division deems that it has the power to regulate intrastate commerce then we respectfully submit that the Division's views are directly in conflict with the view of the Supreme Court in the Wisconsin Rate Case, supra, quoted above, to the effect that the Commission has not power of General regulation of intrastate commerce.

[fol. 1168] We respectfully urge, that since the issues and the parties to this case are so confined and restricted the Interstate Commerce Commission should not attempt to exercise any general regulatory power over Florida intrastate rates in this proceeding. To do so would invade the rights of State which are reserved to it under the constitution of the United States.

4. This Case Differs Materially from the Shreveport Case in Several Fundamental Aspects

In consideration of the above explanations of the fundamental features of this case, special attention is directed to the fact that it differs materially from the ordinary and usual Shreveport Cases (234 U. S. 342), which first gave rise to the exercise of the Interstate Commerce Commission's special jurisdiction or power over intrastate rates. (1) In the typical Shreveport Cases the level of the intrastate rates is usually based upon direct action of a state legislature or state Commission; whereas, in this case, the intrastate rates were voluntarily published by the defendant and the Florida Commission approved of the filing of the amended tariffs. The State authorities did not prescribe the intrastate rates as maximum reasonable rates. The defendant has never been prevented by the State of Florida from making changes in its log rates. (2) In the typical Shreveport Cases the complainant, or the real party in interest is usually the Common Carrier, which, because of the restraint of State regulatory bodies, is prevented from increasing its intrastate rates; whereas, in this case, the defendant has never been prevented from applying to the State Commission for authority to increase its Florida log rates and has never expressed a wish or desire to disturb [fol. 1169] its Florida log rates. In the Shreveport Cases the defendant common carriers are usually complaining defendant which seek relief from state regulation. In this

case the defendant has never requested or sought any change in its Florida intrastate log rates, which it voluntarily published with approval of the Florida Commission. (3) In the usual Shreveport Cases there are ordinarily present at the hearing numbers of shippers, interstate, who are in actual and keen competition with the shippers, intrastate, and who have no difficulty in proving there is real, actual, competition, and that the difference in rate levels actually keeps them out of markets which they could reach if the transportation charges were relieved of artificial barriers imposed by state boundaries and state regulation. In this case no real, active competition is proven, and no actual or potential movement exists, or could exist. Financial and economic laws, other than transportation charges, preclude any actual competition and preclude any actual or potential movement.

## VII. Division's Order Will Not Have the Intended Effect

### 1. Order Will Not Help Any Georgia Shipper

Petitioners ask that the order entered by Division 4, which is intended to remove alleged undue prejudice against Georgia mills and interstate commerce, be revoked, on the ground that it will not have the intended effect.

The order will not help or benefit any Georgia mills, because no Georgia mills filed a complaint and only one testified on behalf of the complaint of undue prejudice and no undue prejudice of any Georgia mill or shipper has been [fol. 1170] proven. The evidence clearly proves that there is no existing movement of logs to Georgia mills, that there is no timber in the northern fringe of Florida available for purchase and shipment over the Atlantic Coast Line to any Georgia mill, and that the shipment of logs for such distances is financially impracticable. No Georgia shipper is hurt by the difference in rates, and no Georgia shipper proposes or expects to use the scale prescribed by Division 4.

### 2. Order Cannot Affect Other Lines

The order cannot affect all of the other lines. No other carriers in Florida could change their intrastate log rates to the basis prescribed by Division 4. The laws and regu-

lations of the State of Florida prohibit and prevent them from changing their rates until they have secured the express approval of the Railroad Commission of Florida. Therefore, if the order of Division 4 is made the order of the Commission, and if it becomes effective, the federal authority will supersede the Florida laws and regulations insofar as the Atlantic Coast Line is concerned and compel that carrier to revise its intrastate rates without its request or consent, but the federal authority in this case cannot permit all other Florida Railroads to change their log rates also. Neither can all of the carriers, other than the Coast Line, change their rates under the Division's order in this case. In case they should attempt to evade the laws and regulations of the State of Florida it would become the duty of the Railroad Commission and the Executive branch of the sovereign State of Florida, through the office of the Attorney General to compel the carriers, not parties to this proceeding, to continue their present log rates until such time as they may have filed application for changes therein [fol. 1171] with the Florida Railroad Commission and shall have secured that Commission's approval thereof.

If the Division's order against the Coast Line were complied with the traffic from competitive points with other lines, such as the Seaboard Air Line, would simply be diverted to the lines other than the defendant Atlantic Coast Line, and that defendant would lose all of the substantial revenue which it has been receiving from this heavy movement of log traffic.

The order would not benefit, aid or develop interstate Commerce, or any interstate shippers.

### 3. Order Would Subject Florida Shippers to Irreparable Injury and Destroy Florida Commerce

The order would materially injure Florida intrastate shippers, and cause irreparable injury to large investments of capital in Florida mills, and would throw thousands of their laborers and employee out of work. The order would stop Florida intrastate log traffic, which is moving in large volume and is yielding large aggregate revenues to the defendant railroad.

### 4. It is Not the Purpose of the Interstate Commerce Act to Destroy Intrastate Commerce

A fair and impartial interpretation of the Interstate Commerce Act, its history, and the circumstances which led to its enactment and subsequent amendments, reveals a definite constructive purpose of aiding and developing commerce between the States, not of destroying intrastate commerce. The purpose of the Act is to enable interstate commerce to move freely, and to rid interstate commerce of any restrictive and retarding obstacles which might be thrown into ways through state regulation of intrastate traffic. The purpose is not to make a mere mathematical and tech- [fol. 1172] nical difference in rates a cloak or pretense for the general regulation of intrastate rates by the Interstate Commerce Commission. The purpose is to aid interstate shippers, when they suffer any real and substantial injury to any material extent by reason of actual preference in state rates. Where these elements are not present it is not the purpose of the Interstate Commerce Act to do substantial injury to intrastate shippers, to destroy invested capital in mills which use logs from intrastate points, or to throw thousands of industrial employees out of work. Where no interstate commerce is existent, actual or potential, it is not the purpose of the Act to compel a carrier, such as the Atlantic Coast Line here, to increase its intrastate rates, against its will, to a basis which will destroy the intrastate traffic and wipe out the revenue therefrom which has been built up under rates of its own making.

## VIII. Conclusion

Petitioners feel that the unusual and striking facts of this case are not known and understood by the Division. That, otherwise, the Division would not have made its findings of undue prejudice and unjust discrimination, and would not have entered its order prescribing the method by which the alleged prejudice and discrimination should be removed.

Petitioners therefore ask that the Interstate Commerce Commission weigh the facts and evidence in this case with care, and that it reverse the conclusions and revoke the

order of Division 4 insofar as the issues of undue prejudice and unjust discrimination are concerned.

Petitioners further ask that in the meantime the Inter-
[fols. 1173 & 1174] state Commerce Commission revoke and annul the order of Division 4 in the particulars enumerated above pending reargument and reconsideration.

Railroad Commission, State of Florida, by Fred H. Davis, Attorney General, State of Florida.

Dated at Tallahassee, Florida, September 27, A. D. 1928.

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[fol. 1175] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF WILSON LUMBER COMPANY OF FLORIDA FOR LEAVE TO INTERVENE AND FOR RECONSIDERATION AND REARGUMENT —Filed Oct. 1, 1928.

Comes the Wilson Lumber Company of Florida and respectfully petitions that it be permitted to intervene in and become a party to the above-entitled proceeding and that said proceeding be reopened for reconsideration and reargument and as grounds therefor petitioner respectfully states:

I

That petitioner is a corporation organized and existing under the laws of the State of Florida and is now operating a sawmill at Perry, Fla., on the line of the defendant, At-
[fol. 1176] lantic Coast Line; that petitioner has contracts with various companies owning large tracts of timber in Florida, to purchase from them the logs cut from such timberlands; that petitioner has invested approximately $200,000 in its mill and that if the order of the Commission entered herein on the 2d day of August, 1928, becames effective, it will result in an increase of more than one hundred per cent in the rates on the logs which petitioner contracted to purchase, and that petitioner will be unable to operate said mill and its investment will be lost.

II

That the logs which petitioner has contracted to purchase are to be delivered to it at points on the line of defendant, Atlantic Coast Line, south of Perry, Fla., and the movement of said logs to plaintiff's mill at Perry, Fla., will be wholly intrastate; that rates on a relatively low basis for the movement of said logs within the State of Florida are absolutely necessary if said logs are to move because in shipping the lumber, the product of said logs, outbound to the large consuming markets, such as Detroit, Mich., and Chicago, Ill., the manufacturers of lumber in Georgia, and other States north of Florida, enjoy a freight rate advantage over petitioner shipping from Perry, Fla., of from 3 cents to 8 cents per hundred pounds; that the defendant, Atlantic Coast Line Railroad, was advised of the existence of such conditions and was actuated thereby in establishing rates for the movement of logs in Florida on a lower basis [fol. 1177] than maintained by it for interstate movement, and that such lower basis was necessary in order to permit the development of the sawmill industry in Florida; that so long as said rates do not discriminate unduly against interstate commerce, defendant, Atlantic Coast Line Railroad, is justified in maintaining same so as to develop the territory along its lines in Florida and foster the movement of the product of said logs by its line, thereby developing the territory served by it and creating outbound traffic.

III

That no power is vested in this Commission to control intrastate rates except where such control by this Commission is necessary to protect interstate commerce against undue discrimination; that therefore such power as the Commission possesses over intrastate rates is wholly incidental and indirect and this commission should not exercise such incidental power except where it is clearly shown that its exercise is necessary to the protection of interstate commerce and even in such case, only to the extent that its exercise is necessary to remove discrimination against interstate commerce; that in this case all of the evidence shows that if any discrimination exists against interstate com-

merce, it is purely technical, and not actual, and therefore conditions do not exist which are necessary to bring into existence the power upon the part of this Commission to change or prescribe intrastate rates.

[fol. 1178] IV

That under the circumstances existing in this case, as shown by the record, and in view of the incidental nature of the power of the Commission, and further in view of the destructive effect of the Commission's order upon a great industry of the State of Florida, the Commission should not make such order final until the case has been fully considered by the entire Commission. Since the order herein was entered by a division of the Commission, it is respectfully submitted that the case should be reconsidered by the entire Commission, especially as the decision of the Supreme Court in U. S. v. Abilene & Southern R. R. Co., 265 U. S. 274, would seem to make a reconsideration by the entire Commission of the findings of a division advisable, if not necessary.

Wherefore, petitioner, Wilson Lumber Company of Florida respectfully prays that it be permitted to intervene in the above-entitled proceeding, and that the Commission set aside so much of its order of August 2, 1928, as prescribed rates on intrastate hauls within the State of Florida and reopen this proceeding for reargument and reconsideration, and that this petitioner be heard in brief and argument in [fol. 1179] said reopened proceeding, and that the Commission enter such further order, or orders, in the premises as it may seem reasonable and just.

Respectfully submitted.

Wilson Lumber Company of Florida, by J. V. Norman, Norman, Quirk & Graham, Attorneys. Wilson Lumber Company of Florida, by Norman, Quirk & Graham, Attys.

Address Plaintiff's Attorney: Inter-Southern Building, Louisville, Ky.

September 25, 1928.

[fol. 1180] 11. That the intrastate Florida rates charged and received by defendant carrier for the transportation

of logs from Florida producing points to destinations in Florida give undue and unreasonable preference and advantage to intrastate shippers in Florida; and are unduly prejudicial and disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce in the violation of Section 13 of the Interstate Commerce Act.

12. That the rates herein complained of have already been increased since January 1st, 1910.

Wherefore, the complainants pray:

(a) That the defendant carrier may be required to answer the charges herein, and that after due hearing and investigation an order be made requiring said defendant, the Atlantic Coast Line Railroad Company, to cease and desist from the aforesaid violation of the Interstate Commerce Act.

(b) That the Commission determine and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged in the future by the defendant carrier for the transportation of carload shipments of logs, from all points located in the State of Florida to all destinations located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida.

(c) That such further order or orders be made as the Commission may consider proper in the premises. Dated at Atlanta, Georgia, April 23rd, 1926.

Georgia Public Service Commission, by James A. Perry, Chairman. E. M. Price, Rate Expert. James A. Perry, E. M. Price.

Atlanta, Ga., April 23rd, 1926.

[fol. 1181] EXHIBIT A

Statement Showing Comparison of Florida Intrastate Rates on Logs per Car 50,000 lbs. and Interstate Rates between Florida and Georgia Points. Both Scales Published for Account Atlantic Coast Line Railroad.

| Distance miles | Florida interstate scale | Florida-Georgia interstate scale | Interstate scale higher |
|---|---|---|---|
| 5 | $8.55 | $12.50 | 46% |
| 10 | 8.55 | 15.00 | 76% |
| 15 | 8.55 | 17.50 | 104% |
| 20 | 8.55 | 17.50 | 104% |
| 25 | 8.55 | 20.00 | 133% |
| 30 | 8.55 | 20.00 | 133% |
| 35 | 8.55 | 22.50 | 163% |
| 40 | 8.55 | 22.50 | 163% |
| 45 | 10.50 | 25.00 | 138% |
| 50 | 10.50 | 25.00 | 138% |
| 55 | 10.50 | 27.50 | 161% |
| 60 | 11.50 | 27.50 | 161% |
| 65 | 11.50 | 30.00 | 160% |
| 70 | 11.50 | 30.00 | 160% |
| 75 | 11.50 | 32.50 | 200% |
| 80 | 11.50 | 32.50 | 200% |
| 85 | 11.50 | 35.00 | 233% |
| 90 | 11.50 | 35.00 | 233% |
| 95 | 13.00 | 35.00 | 169% |
| 100 | 13.00 | 35.00 | 169% |
| 110 | 14.00 | 37.50 | 168% |
| 120 | 16.00 | 40.00 | 150% |
| 130 | 16.00 | 42.50 | 165% |
| 140 | 17.00 | 42.50 | 150% |
| 150 | 17.00 | 45.00 | 164% |
| 160 | 17.00 | 45.00 | 164% |
| 170 | 18.50 | 47.50 | 156% |

Tariff Authorities:

Florida Intrastate rates, Supplement 29 to A. C. L. Southeastern Tariff No. 5-B; I. C. C. B-2255, effective August 24, 1925.

Florida-Georgia Interstate rates, Agent Glenn's I. C. C. A-415 (Southern Lumber Tariff No. 6), Supplements thereto and reissues thereof).

[fol. 1182] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER DENYING PETITIONS FOR REARGUMENT AND RECONSIDERATION, ETC.—Nov. 1, 1928

Upon further consideration of the record in the above-entitled proceeding and of petitions for reargument and reconsideration filed by the Railroad Commission of the State of Florida and by the intervening defendants and petition of Wilson Lumber Company for leave to intervene and for reconsideration and reargument and of reply to said petitions filed by complainant:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission:

George B. McGinty, Secretary. (Seal.)

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[fol. 1183] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 1184] [Caption omitted]

[fol. 1185] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 511

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Nov. 24, 1928

To the Honorable the Judges of the District Court it is respectfully shows as follws:

I

The petitioners, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, are each

corporations having their principal offices respectively in Eastport, Palatka and Jacksonville, Florida, and each is extensively engaged in the business of manufacturing and selling lumber.

II

The defendant United States of America is made such by virtue of an Act of Congress known as the Commerce Court Act (36 Stat. L., 539) and District Court Jurisdiction Act, [fol. 1186] (38 Stat. L., 219). The defendant Interstate Commerce Commission is an administrative tribunal created by Act of Congress, February 4, 1927, and whose duties and powers are defined in such Act and amendments thereof and supplements thereof.

III

The petitioners are the owners of many millions of feet of standing timber in the State of Florida, located more particularly in the counties of Taylor, Pasco, Citrus, Hernando, Sumter, Orange, Osceola, Brevard, Lake, Volusia, Clay, St. Johns, Putnam, Flagler, Madison, LaFayette, Jefferson, Alachus, Baker, Dixie, Levy and Wakulla. These petitioners own in the aggregate 1,500,000,000 feet of standing uncut timber. The capital value of such standing timber aggregates approximately fifteen millions of dollars. In their cutting, logging, milling and marketing operations the petitioners normally employ more than 2500 men.

At Eastport, Florida, on the St. Johns River, in the vicinity of Jacksonville, Florida, the Brooks-Scanlon Corporation, one of the petitioners herein, owns and operates a large lumber mill having a normal capacity of one hundred million feet annually. It employs at Eastport normally 700 people who, together with their families constitute practically all of the total population of such town of Eastport.

The Wilson Cypress Company, one of the petitioners herein, owns and operates at Palatka, Florida, on the St. Johns River, a large sawmill, employing at such mill and in its logging operations about 600 people. Such employees, together with their families, constitute an important part of the population of the City of Palatka, Florida.

The combined investment of said three petitioners, other than their investment in their standing timber approximates nine million five hundred thousand dollars ($9,500,000.)

The Cummber Cypress Company, one of the petitioners herein, own and operates a large mill at the town of Lachoochee, Florida, employing at such mill and in their logging operations over 850 people.

[fol. 1187] IV

The Atlantic Coast Line Railroad Company owns and operates various lines of railway in the State of Georgia and Florida, including lines from petitioners' timber areas to the respective lumber mills at said Eastport, Lachoochee, and Palatka, described above. Over such line of railway the Atlantic Coast Line transports for petitioners wholly within the State of Florida many carloads of logs. To the lumber mills of petitioners the hauls of logs by railroad over the Atlantic Coast Line from the timber areas of petitioners are all within 170 miles.

For the transportation of such logs wholly within the State of Florida as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established and has continued in effect and now charges and (if lawful so to do) is willing to continue to charge a certain mileage scale of rates known as the "Cummer scale," which, for the varying distance up to 170 miles, provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way."

The Atlantic Coast Line Railroad Company also has published and filed with the Interstate Commerce Commission certain rates which would be applicable to any movement of logs over its lines from Florida origins to Georgia destinations which such rates are higher in amount for like distances than the so-called "Cummer scale" applicable for the certain distances and under certain conditions between points in Florida as above described.

V

The Georgia Public Service Commission is an administrative tribunal created and existing by authority of law

under the constitution and the statutes of the State of [fol. 1188] Georgia, having its official residence in the City of Atlanta, which is in the northern district of Georgia, and so within the jurisdiction of this Court.

VI

On or about to-wit, May 5, 1926, such Georgia Public Service Commission in its own name, filed with the Interstate Commerce Commission a certain complaint against the Atlantic Coast Line Railway Company. In such complaint it was alleged that the rates of freight of logs published by the Atlantic Coast Line Railroad as applicable to shipments of such commodity from origins on its line in Florida to destinations on its line in Georgia then were and thereafter would be unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act. It was further alleged in such complaint that the contemporaneous publication of such interstate and intrastate rates above described constituted and thereafter would constitute undue prejudice and disadvantage to Georgia Lumber manufacturers and Georgia communities and unjust discrimination against interstate commerce to the undue preference and advantage of shippers of logs between points in Florida in violation of the provisions of Sections 3 and 13 of the Interstate Commerce Act.

VII

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad Company which thereafter, and in due course, filed with the Interstate Commerce Commission its answer thereto and in such answer the railroad denied that there was or had been any violation on its part of the interstate commerce act.

[fol. 1189] The Interstate Commerce Commission, also, in compliance with Sections 13 (3) of the Interstate commerce act, notified the State of Florida and the Florida Railroad Commission of the proceedings, and that Commission upon the subsequent hearing appeared in defense of the Florida intrastate rates.

Before such complaint and the matters and things involved therein were assigned for public hearing the Commission received and allowed a petition for intervention which was filed by the Elberta Crate Company, of Bainbridge, Georgia, which such intervention appeared to be in support of the complaint.

VIII

Thereafter, on or about to-wit, the twentieth day of October, 1926, the Interstate Commerce Commission without other pleadings in order of investigation, assigned for full public hearing in Valdosta, Georgia, such complaint of the Georgia Public Service Commission and the matters and things therein involved; and at that time and place such public hearing was commenced.

Before the introduction of any evidence at such hearing by any parties there were filed with the Interstate Commerce Commission at such public hearing a number of petitions of intervention in opposition to such of the complaint of the Georgia Public Service Commission as alleged any violation of Sections 3 and 13 of the Interstate Commerce Act by the Atlantic Coast Line Railroad Company. Such interventions were then received and allowed in behalf of the following parties, to-wit: each of the petitioners herein, together with the Putnam Lumber Company, and Cummer Lumber Company, each then of Jacksonville, Florida, and having extensive timber ownership in substantially the same Florida territory as those petitioners and then operating lumber mills in Jacksonville, Florida, and then ship-
[fol. 1190] ping over the Atlantic Coast Line Railroad to its mill logs in large amounts; the Georgia-Florida Sawmill Association, embracing at that time a large majority of the lumber manufacturers in that part of the State of Georgia, involved in that proceeding; the Southern Pine Association and the Southern Cypress Manufacturing Association, embracing within their membership numerous manufacturers of pine and cypress lumber in Florida, Georgia and elsewhere in Southern territory; and the Jacksonville Traffic Bureau, a civic organization in the City of Jacksonville, embracing within its membership numerous industrial, financial and other commercial interests therein.

There also intervened in such case or proceeding before the Interstate Commerce Commission the Seaboard Air Line Railway Company, the Central of Georgia Railroad Company, the Southern Railway Company, the Georgia-Sourthern and Florida Railroad, and the American Short Line Railroad Association. Such parties intervened in behalf of the defendant Atlantic Coast Line Railroad Company on the issue of alleged violation of Section 1 of the interstate commerce act in respect to the measure of rates on logs published by the Atlantic Coast Line for application to shipments from origins on its lines in Florida to destinations on its line in Georgia; but the intervention of such other railroads was in intended and professed support of the complaint of the Georgia Public Service Commission and against the Atlantic Coast Line in so far as said complaint of the Georgia Public Service Commission alleged that the Atlantic Coast Line Railroad Company was violating the provisions of Sections 3 and 13 of the interstate commerce act by the continued maintenance over its lines from Florida to Georgia and the lower intrastate rates over its line between points in Florida.

IX

Thereupon the Georgia Public Service Commission, the Elberta Crate Company, the Atlantic Coast Line Railroad [fol. 1191] Company and the other intervening railroads submitted at such public hearing in Valdosta certain evidence upon conclusion of which petitioners herein, the Putnam Lumber Company, Cummer Lumber Company, and all the other intervening shipper defendants, and the Florida Railroad Commission submitted and filed a motion to dismiss the proceedings in entirety on the ground that there was a total insufficiency of evidence remotely tending to sustain any allegations in the complaint or sufficient to constitute a cause of action within the power of the Interstate Commerce Commission. Such motion to dismiss was thereupon taken under advisement and the hearing at Valdosta adjourned to a date thereafter to be fixed.

X

Prior to the further hearing the Georgia Public Service Commission petitioned the Interstate Commerce Commis-

sion for leave to reopen the record and to submit further evidence in its behalf, which such petition was granted, and thereupon the case came on for further public hearing in the City of Jacksonville commencing on the eighteenth day of January, 1927. At such time certain additional evidence was submitted by the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company, upon the conclusion of which the petitioners here, the Putnam Lumber Company, Cummer Lumber Company and all the other intervening shipper defendants, and the Florida Railroad Commission renewed the previous motion to dismiss the case, which such motion was taken under advisement and the hearing proceeded. Thereupon the petitioners here, the Putnam Lumber Company, Cummer Lumber Company the other intervening defendants referred to, and the Florida Railroad Commission, without waiving their motion to dismiss, submitted a substantial amount of evidence all of which was received and allowed and made a part of the record in such case.

[fol. 1192] XI

Thereafter, on or about to-wit: the fifteenth day of August 1927, an Examiner of the Interstate Commerce Commission, to whom the case has been assigned for the taking of evidence and submission of proposed report, did file, submit and serve upon all interested parties his proposed report in such proceedings. In such proposed report it was found and concluded by the Examiner and recommended by him that the Commission find and conclude that the interstate rates on logs published by the Atlantic Coast Line Railroad for application from origins in Florida to destinations in Georgia were and thereafter would be unreasonably high in slight amounts. It was, however, found and concluded by the Examiner and recommended by him that the Commission conclude that under the evidence of record in the case there did not then exist any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line, that the differences in prevailing rates applicable to logs moving over the Atlantic Coast Line wholly within Florida and those published for application over the Atlantic Coast Line from Florida to Georgia has not, did not and would not cause or

constitute undue or unjust prejudice or disadvantage against interstate shippers or communities or undue preference or advantage of Florida intrastate shippers or communities or undue preference or advantage of Florida intrastate shippers or communities, and that the evidence before the Commission did not establish any case of unjust discrimination against interstate commerce as such by reason of the voluntary continuance of the lower Florida intrastate rates on logs by the Atlantic Coast Line Railroad.

[fol. 1193] XII

Thereafter, the Georgia Public Service Commission and the intervening railroads hereinbefore named filed with the Interstate Commerce Commission exceptions to such proposed report of the Commission Examiner to which exception replies were in due course filed by petitioners herein, the Putnam Lumber Company and by the other intervening defendants, including the Southeastern Forest Products Association, which had then succeeded the association formerly known as the Georgia-Florida Sawmill Association, an original intervening defendant, and also by the Florida Railroad Commission.

In due course the case or proceeding, including the exceptions to the proposed report of the Commission Examiner and replies thereof, came on to be orally argued in Washington, D. C. before two members of the Interstate Commerce Commission constituting a majority of Division 4 thereof at such time. At such argument there appeared counsel for the Georgia Public Service Commission on the one side and for the State Railroad Commission of Florida and the Atlantic Coast Line Railroad Company and the intervening shipper defendants, on the other side.

[fol. 1194] XIII

Thereafter, on August 2, 1928, such Division 4 of the Interstate Commerce Commission rendered its certain report and order in the proceedings herein referred to, attached hereto and made a part hereof, being marked Appendix "A".

In such report and order it was found and concluded by such Division 4 of the Commission that the interstate rates

on logs published by the Altantic Coast Line Railroad to Georgia destinations on its line from Florida origins on its line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs were, and would be, unjust, and unreasonable in violation of the provisions of Section 1 of the interstate commerce act in the same amounts previously found and recommended to it by the Examiner.

It was, however, further found by such Division 4 as follows:

"We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce."

"We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia."

"We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions."

Accompanying such report was an order requiring the Atlantic Coast Line Railroad to establish on or before October 10, 1928, the interstate rates on logs therein described and (without any date being fixed therefore) requiring the Atlantic Coast Line Railroad to cease and de-
[fol. 1195] sist from practising the undue preference and advantage undue prejudice and unjust discrimination found in such report to exist "in the relation of intrastate to interstate rates" and to establish and put in force for the movement of logs between any two stations on its railroad throughout the State of Florida rates which should be the same as those prescribed as reasonable for the trans-

portation of lots to Georgia destinations on its line from origins in Florida on its line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs.

XIV

Thereafter, such Division 4, by an order dated the 27th day of August, 1928, fixed and prescribed November 10, 1928, as the date upon which the Florida intrastate log rates of the Atlantic Coast Line Railroad should be advanced for the reasons, in the manner and to the extent hereinabove described. Subsequently such effective date of the prescribed increases in Florida rates on logs of the Atlantic Coast Line was extended to December 10, 1928.

XV

On or about, to-wit: October 1, 1928, petitioners herein, the Putnam Lumber Company, Cummer Lumber Company, the other intervening defendants filed with the Commission their petition for reargument and reconsideration of that part and portion of the report and order of Division 4 as had found the Florida intrastate log rates of the Atlantic Coast Line Railroad violative of Sections 3 and 13 of the Interstate Commerce act. On the first day of November, 1928, a majority of the full membership of the Interstate Commerce Commission denied such petition for reargument and reconsideration.

[fol. 1196] XVI

Wherefore, having exhausted their administrative remedies, petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside such report and order of the Interstate Commerce Commission and enjoining enforcement thereof in so far as such report and order in any way dealt with the Florida Intrastate rates of freight of the Atlantic Coast Line Railroad Company therein involved, an- affecting shipments of logs under such rates to petitioners from their points of shipment in Florida to their lumber mills in Florida, as hereinabove described.

And as grounds therefor, petitioners respectfully show unto the Court that said report and order, in respect to such

Florida interstate rates on logs of the Atlantic Coast Line Railroad Company are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others.

XVII

Such report and order of the Commission are unlawful because there is not and cannot be any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

XVIII

Such report and order of the Commission are unlawful because there is no affirmative finding by the Commission that there is or could be or would be any such interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destination on its line.

[fol. 1197]

XIX

Such report and order of the Commision are unlawful because the Commission put upon the Atlantic Coast Line Railroad Company and the intervening shipper defendants the burden of proving that there could not or would not be any such interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

XX

Such report and order of the Commission are unlawful because there was no substantial evidence before the Commission that there was, could be, or would be any such interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida origins to Georgia destinations on its line.

XXI

Such report and order of the Commission are unlawful because the evidence before the Commission completely proved and established that there is not, could not be and would not be any interstate commerce in logs over the At-

lantic Coast Line Railroad Company from Florida origins to Georgia destinations over its line.

XXII

Such report and order of the Commission are unlawful because it is not found therein that such interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida origins to Georgia destinations over its line, would or could result from an increase in such Florida interstate log rates of the Atlantic Coast Line Railroad Company hereinabove described, as would make them correspond to the interstate rates required in said report and order to be established as just and reasonable rates to apply from Florida origins to Georgia destinations over [fol. 1198] the Atlantic Coast Line.

XXIII

Such report and order of the Commission are unlawful because there was no substantial evidence before the Commission showing or tending to show that interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia could or would result from the compulsory increase of the Florida interstate rates on logs of the Atlantic Coast Line Railroad Company in the amount and to the extent therein found and prescribed as reasonable for the interstate transportation of logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

XXIV

Such report and order of the Commission are unlawful because contrary to the evidence before the Commission, which said evidence completely proved and established that the compulsory increase of such Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and would not result in the creation of intertsate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

XXV

Such report and order of the Commission are unlawful because there was no substantial evidence of record before

the Commission showing or tending to show that substantially similar circumstances and conditions surround the transportation of logs by railroad, on the one hand, over the Atlantic Coast Line Railroad Company between points in Florida, and, on the other hand, from origins on its line in Florida to destinations in Georgia.

[fol. 1199] XXVI

Such report and order of the Commission are unlawful because there was no issue or controversy under the issued as restricted and defined at the hearing as to the question that the lower level of such Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

XXVII

Such report and order of the Commission are unlawful because there was no evidence whatsoever before the Commission supporting or tending to support the conclusion that the continued maintenance of such Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

XXVIII

Such report and order of the Commission are unlawful because they seek to interfere with the voluntary continuance of such Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provision of Section- 3 and 13 of the interstate commerce act, and without any request or petition by said Atlantic Coast Line Railroad Company, to either the Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate Log Rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company, to increase said rate.

XXIX

[fol. 1200] Such report and order of the Commission are unlawful because the only conclusion of fact asserted by the Commission to sup-ort its finding that the continued maintenance of such Florida intrastate log rates would unjustly discriminate against interstate commerce in that such rates are "less than reasonably compensatory." Petitioners respectfully aver that there is no substantial evidence to support such finding and further that if such conclusion of the Commission were supported by evidence, it would be and is insufficient to support the finding and order that interstate commerce would be unjustly discriminated against in violation of Section 13 of the interstate commerce act by the continued and voluntary maintenance of such Florida intrastate log rates.

XXX

Such report and order of the Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company herein referred to.

XXXI

Petitioners further respectfully show unto the Court that the operation and effect of such order of the Interstate Commerce Commission will be to cause irreparable damage and injury in this, to-wit:—such order would require that the Atlantic Coast Line Railroad Company very greatly increase the transportation charges now being paid by petitioners herein for the transportation of logs to their lumber mills in Florida from their Florida shipping points in their timber areas in that state; such increases in transportation costs would immediately render it unprofitable to attempt to continue to transport such logs by railroad to existing lumber mills which are located substantial dis-
[fol. 1201] tances away from the sources of the timber supply; on account thereof petitioners herein would immedi-

ately be required to discontinue and abandon their existing lumber mill operations and undertake to reconstruct new mills in the timber areas at the sources of supply of logs so as to completely avoid common carrier railroad transportation thereof; that such closing down of existing mills and their reconstruction and relocation in the timber areas would involve expenditure of several millions of dollars by petitioners, which sums, however, would be less than pay ment of the increased transportation charges on the remaining uncut timber owned and being developed by petitioners in Florida; and that such immediate shut-down and closing of such large lumber mills of petitioners would at once throw out of employment thousands of persons, causing distress to them and their families, to the communities in which they reside and to the merchants and other commercial enterprises dependent upon the continued operation of the lumber mills of petitioners at their present locations. Such damages to petitioners, thousands of innocent persons and to public institutions in the state of Florida could not be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete and adequate remedy at law available to them in the premises.

XXXII

That said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States, and of the citizens of the State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Commission was and is without jurisdiction to enter the same.

[fol. 1202] XXXIII

That said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the said Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

XXXIV

Since the commencement of the proceedings before the Interstate Commerce Commission and their participation

therein the Putnam Lumber Company and Cummer Lumber Company, intervening shipper defendants, have ceased to transport logs intrastate over the Atlantic Coast Line Railroad in Florida.

Wherefore it is respectfully prayed by petitioners herein as follows:

(1) That process may issue against the defendants herein with service thereof and of this bill of complaint in the manner prescribed by statute;

(2) That this Honorable Court will grant to petitioners herein an interlocutory order setting aside and enjoining enforcement of such part, or parts of the order of the Interstate Commerce Commission hereinabove described and affecting Florida intrastate rates as alleged to be unlawful, and the operation and effectiveness of any rate or schedules of rate finding, with said Interstate Commerce Commission purporting to be in compliance with its said order, such interlocutory order to continue in force until further order of the Court;

(3) That upon final hearing there will be made and entered a decree and order of this Honorable Court annulling, setting aside and enjoining enforcement of such part or parts of the order of the Interstate Commerce Commission hereinabove described and affecting Florida Intrastate Rates as alleged to be unlawful, and the operation and ef-
[fol. 1203] fectiveness of any rate or schedules of rate finding, with said Interstate Commerce Commission purporting to be in compliance with its said order; and

(4) That Petitioners herein may have such other and further relief as the facts shown unto this Honorable Court shall entitle them and require.

Respectfully submitted.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel for Petitioners.

[fol. 1204] *Duly sworn to by M. J. Scanlon. Jurat omitted in printing.*

[fols. 1205-1217] Exhibit "A" to bill of complaint omitted; printed side page 19 ante.

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[fol. 1218] In United States District Court

[Title omitted]

Notice of Application for Injunction

To the Attorney General of the United States, the Interstate Commerce Commission:

You will hereby take notice that the petitioners herein will present to the District Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the second day of August, 1928, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and in the written Motion, copy of which is also attached hereto, and that said application will be for hearing at Atlanta, Georgia, at 10 o'clock a. m., on the third day of December, 1928, or as soon thereafter as the Court may hear the same.

[fol. 1219] Dated this — day of November, 1928.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel.

Service, by copy, of the within application and notice is hereby acknowledged this 26 day of November, 1928.

William J. Donovan, the Assistant to the Attorney General, for the Attorney General of the United States. Daniel W. Knowlton, Chief Counsel Interstate Commerce Commission.

[fol. 1220] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Dec. 24, 1928

United States, for answer to the bill of complaint filed herein against it, says:

I

United States admits the facts and conclusions alleged in paragraphs I, II, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of the bill of complaint, but alleges that the matters and things set forth and alleged in said paragraph XI are irrelevant and immaterial to any issue raised by or involved in this proceeding, and are mere surplusage, because the proposed report of the examiner is not the report or order of the Interstate Commerce Commission and is not and could not be attacked in this proceeding.

II

For answer to paragraph III of the bill of complaint, United States says it has not sufficient knowledge or information upon which to form a belief concerning the matters and things in that paragraph alleged, and, therefore, as to them, neither admits nor denies.

III

United States denies the allegations and conclusions contained in paragraphs XVI to XXXIII, inclusive, of the bill of complaint.

[fol. 1221]

IV

For answer to paragraph XXXIV of the bill of complaint, United States says it has no knowledge, information or belief concerning the allegations of said paragraph and therefore neither admits nor denies.

V

Except as herein expressly admitted United States denies the truth of each and every allegation made and contained

in the bill of complaint in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 1222] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 1223] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AS DEFENDANT BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes Georgia Public Service Commission and respectfully represents that it was the complainant before the Interstate Commerce Commission in the proceeding which resulted in the report and order which is the subject matter of the litigation in this cause.

Your petitioner desires to appear and be made a party defendant in the said cause and to be represented before this Court in the disposition thereof.

This petition is made in accordance with Section 213 of the Federal Judicial Code.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

The foregoing petition of Georgia Public Service Commission is granted, this 29th day of December, 1928.

Sam'l H. Sibley, Judge United States District Court, Northern District of Georgia.

[fol. 1224] IN UNITED STATES DISTRICT COURT

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

Georgia Public Service Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainants' bill of complaint contained, for answer thereunto and to so much or such part thereof as it is advised that it is material for it to answer, says:

1

This intervenor admits the allegations of paragraph 1 of the bill.

2

Intervenor admits the allegations of paragraph 2 of the bill.

3

Intervenor admits that the complainants are owners of large tracts of standing timber in the State of Florida. The extent of the ownership or of the investment is unknown to intervenor. Intervenor alleges that the large holdings of the complainants in standing timber in the State of Florida have been used and are being used in competition with saw mill owners in the State of Georgia in interstate commerce; that the lumber manufacturers in Florida and in Georgia seek the same markets and the same consumers and come into serious competition with each other at points out of the States of Florida and Georgia and in the large consuming points in other parts of the United States.

4

The allegations of paragraph 4 as to the ownership of lines of railway by the Atlantic Coast Line Railroad Company in the States of Georgia and Florida and as to the transportation of logs over such lines of road, are admitted. [fol. 1225] Intervenor is advised as to the history of the "Cummer Scale" of rates on logs in Florida through the

record made before the Interstate Commerce Commission and this record will be before the Court; that the Atlantic Coast Line has published and filed with the Interstate Commerce Commission certain rates applicable to movement of logs over its line from points of Florida origin to Georgia destinations, and that those rates are higher in amount for like distances than the so-called Cummer scale, is admitted. The rates known as the "Cummer scale" were found to be unreasonable by the Florida Commission, as is set out in the report of the Commission.

5

The allegations of paragraph 5 as to the Georgia Public Service Commission, are admitted.

6

The allegations of paragraph 6 are admitted.

7

The allegations of paragraph 7 are admitted.

8

This intervenor admits that the Interstate Commerce Commission set the intervenors' above mentioned petition for hearing at Valdosta, Georgia, on the 20th day of October, 1926, and that a hearing was had at that time and place. A number of persons intervened in opposition to petitioner's petition, including the complainants in the above mentioned cause.

9

Intervenor admits that the Seaboard Air Line Railway, the Central of Georgia Railroad, the Southern Railway Company, the Georgia Southern & Florida Railroad and the American Short Line Railroad Association intervened. Each and all the interventions mentioned in said petition are referred to. They became a part of the record before the Commission and a part of the elements of decision.

10

Intervenor, answering the allegations of paragraph 9, [fol. 1226] avers that intervenor and certain of the other

persons at interest who had intervened in the cause before the Interstate Commerce Commission, submitted evidence at the Valdosta hearing and that the complainants and certain others submitted a motion to dismiss intervenor's petition, which motion was not granted by the Commission, but was denied.

11

Intervenor avers that there was a further hearing in the cause before the Commission in the City of Jacksonville, Florida in January, 1927, and that at said hearing a large amount of additional evidence was offered, consisting of oral testimony of witnesses and of a large number of exhibits and statistics. The said hearing lasted four days during which time many witnesses were examined on both sides of the contention.

12

Intervenor admits that the examiner taking the evidence filed a proposed report in this proceeding. Said proposed report was filed in accordance with the practice in such matters appertaining before the Commission. Said proposed report is referred to and must speak for itself.

13

Intervenor admits that it and other parties at interest in the said hearing who had intervened therein, filed exceptions to all or parts of the above mentioned proposed report; that those exceptions came on to be argued orally and in Washington; that the same was argued; said argument was had before Division 4 of the Commission on the 16th day of December, 1927. The complainants in said cause were heard orally by counsel and filed briefs in said cause.

14

Intervenor admits that Division 4 of the Interstate Commerce Commission rendered a report and order which is attached as Exhibit A to the bill. The report and order are referred to for their contents. In said report, the Inter-

[fol. 1227] state Commerce Commission found in part as follows:

"Florida intrastate rates on logs except cedar in car loads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce and unduly discriminatory against interstate commerce."

The Commission prescribed rates which would remove the said discrimination.

15

It is admitted that Division 4 of the Commission extended the effective date of its aforementioned order to November 10, 1928, and again to Devember 10, 1928.

16

It is admitted that the complainants and certain others filed with the Commission a petition for reargument and reconsideration of so much of the Commission's order as found the Florida intrastate log rates of the Atlantic Coast Line Railroad Company violative of Sections 3 and 13 of the Interstate Commerce Act, and that this motion was denied by the full Commission.

17

Intervenor denies that the report and order of the Commission in respect to the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company are arbitrary and unreasonable or beyond the power of the Interstate Commerce Commission, or that the same are invalid and unlawful.

Intervenor denies the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the bill.

Further answering the said bill intervenor avers:

(1) That under the so-called Cummer scale of rates, that is the Florida intrastate log scale for not exceeding one hundred and seventy (170) miles, the Florida producer of lumber is given a great advantage over his competitor in

the State of Georgia. To illustrate: for one hundred and seventy miles, the maximum distance of the Cummer scale, the Florida rate on a car of 50,000 pounds, is $18.50, and the interstate rate for the corresponding distance is $47.50. [fol. 1228] The Florida scale is less than one-half of the scale applicable in interstate commerce. The State of Florida, because of the nature of its traffic conditions, generally has higher rates than those which apply on the same commodities for similar distances in other States of the Southeast. The log rates prescribed by the Cummer scale are the lowest in the Southeastern territory, and intervenor avers that it would be wholly impracticable for a Georgia producer of lumber to buy logs in Florida and have them carried to his mill in Georgia, for to do that would put a charge on the carriage, of about two and a half times as much as the charge which would have been if the logs had moved a like distance under similar circumstances in the other direction to a Florida destination. The inevitable result of this is to prevent movements of logs from Florida into Georgia.

(2) Intervenor avers that the lumber which is manufactured in Georgia out of logs brought from Florida points of origin must bear a tariff or a tax or a charge or a burden commensurate with the aforementioned difference in the transportation of the logs out of which the lumber is manufactured; that this handicap on the Georgia industry is reflected by the large plants which are located in Florida as compared with those located in Georgia.

(3) Intervenor avers that the intrastate rates in Florida under the Cummer scale are so unreasonably low that they cannot be provided as rates on intrastate commerce in Georgia and in the event the Georgia producer hauls logs for a like distance from a point of origin in Georgia to his mill in Georgia, the same kind of burden will be placed upon the Georgia producer as if the logs had orignated in Florida. So that when the Georgia lumber meets the Florida lumber in interstate competition, the Georgia manufacturer is placed at an unreasonable disadvantage in all circumstances.

(4) Intervenor avers that there is ample evidence to sup- [fol. 1229] port all of the findings of the Commission; that

this evidence consisted of oral testimony evidenced by exhibits and statistics, all of which were introduced in a closely contested proceeding which consumed a number of days at each of the hearings, and then another day in the oral argument before the Commission, besides the filing of briefs and the other motions for reconsideration and reargument, which are referred to in the bill.

(5) There was evidence to support the fact that there was standing timber available for purchase to be used for shipment out of the State of Florida and into the State of Georgia. There was evidence to support the proposition that pending this controversy, standing timber had been purchased by the Florida interests, which timber is under negotiation by Georgia interests, and that this timber was to be used to manufacture lumber in Georgia. Intervenor avers that it would be natural that the Florida lumber manufacturer could outbid the Georgia manufacturer for standing timber in Florida, because the Florida producer has the advantage of the Cummer scale, while the Georgia producer would be at the disadvantage of the interstate scale, to the extent hereinbefore indicated and more fully laid before the Commission.

(6) Intervenor avers that, if it be true that the complainants in this case and their associated companies who intervened in the cause before the Interstate Commerce Commission have acquired their monopolistic holdings in the standing timber in Florida indicated by the allegations of the bill and to such extent that there is now no more standing timber available for sale, that has been made possible by the existence of the Cummer scale and is one of the patent ills worked by the Cummer scale against interstate commerce.

(7) Furthermore, intervenor avers that if the scales of rates were upon equality, the self interest of the present holders of the standing timber in Florida, including the self interest of the complainants themselves, would dictate the [fol. 1230] sale of that timber to the mills in Georgia, which are nearer to that timber than are the mills in Florida.

(8) Intervenor avers that the mills in Florida having acquired large holdings of timber in circumstances which en-

able them through the Cummer scale to outbid competitors in the State of Georgia, seek to continue to hold an unjust and unreasonable advantage acquired through the misuse of transportation rates—all of which is prejudicial to interstate commerce and to the manufacturers of lumber in Georgia, and contrary to the statutes in such cases made and provided.

9

(a) Intervenor avers that in 1921 it, in the discharge of its duties as a public service commission of Georgia, undertook a revision of the Georgia intrastate rates of rail carriers.

The carriers submitted a scale of rates on forest products to be applied without transit and a scale of net rates to be applied on logs and other products under transit arrangements. At the time this was done the Georgia carriers announced their purpose to seek authority to adopt the scale thus submitted for uniform interstate application throughout their several systems, to seek the authority of the various state commissions to make effective the same scale on intrastate traffic in other states as well as the State of Georgia.

The Georgia Commission did not approve the rates submitted, but after extensive hearings it issued, on April 25, 1925, an order to become effective June 1, 1925, prescribing certain rates on logs. Those rates, while lower than the scales submitted by the carriers, were somewhat higher than the existing rates in Georgia.

On May 29, 1925 the Georgia Commission suspended the rates prescribed on April 15, 1925 and a further hearing was held. At this rehearing the evidence was directed largely to the matter of discrimination in respect to which the Georgia Commission stated to the Georgia carriers as follows:

[fol. 1231] "The evidence submitted at the rehearing reveals what is, in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order" (Transcript, p. 210).

(b) To illustrate some of the unusual features of the Florida intrastate log rate which is complained of; that scale begins at 1.71¢ per 100 pounds for a movement of 5 miles and the same rate continues through the 45 mile distance while the corresponding interstate rate begins at 2.5¢ for the 5 miles distance and is graduated, being at 4¢ for 25 miles and 4.5¢ for 45 miles; at 170 miles the Florida rate is 3.70¢ per 100 pounds and the corresponding interstate rate is 9.5¢ per 100 pounds; 170 miles being the maximum distance to which this scale is applicable; the rate for 180 miles becomes 8.33¢ per 100 pounds as compared with 3.7¢ per 100 pounds for 170 miles; the Florida intrastate rate on logs is very much less than its intrastate rate on short logs; the rate on short logs begins at 2.13¢ for 5 miles while on logs it begins at 1.71¢ and at 170 miles the rate on short logs is 6.25¢ and on logs it is 3.71¢.

(c) The Florida scale which is complained of, when compared with other like commodities which usually take the same rates, show the same disparity; for instance, the rate on brick begins at 3¢ for the distance of 5 miles, while the rate on logs is 1.71¢ for the same distance and at 170 miles the rate on brick is 10¢ per 100 pounds while the rate on logs is 3.70. Even greater disparities are shown in the matters of lime, sand and cement.

Reference is made to exhibits 11, 18, 19 and 20 of the record before the Commission and to the testimony of the witness Perrin beginning at page 210 of the transcript.

(d) If the Florida intrastate scale on logs should be adopted for interstate application, the present revenue of $27.50 for a haul of 50 miles would be reduced to $11.55. This would represent less than one-half of the present in- [fol. 1232] terstate revenue and it would mean that the revenue per car on logs for this haul would be about one-third of the revenue on a similar haul on brick and considerably less than one-third of the revenue on sand, gravel or lime and less than one-fifth of the present revenue on cement.

(e) If the present intrastate log scale in Florida should be adopted for interstate application between Florida and Georgia, the per car revenue on logs under the present interstate scale would be reduced for a haul of 100 miles from

$38.50 to $14.30. This figure is less than one-third of the revenue derived for a similar movement of brick intrastate in Georgia, or on gravel, sand and lime, and about ¼ of the revenue derived on a similar movement of cement.

10

This intervenor avers that the contract between the Atlantic Coast Line Railroad Company and the Carpenter-O'Brien Company—which was filed as Exhibit #13 in the proceeding before the Commission contains the following clause:

"It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pursuant and subject to all of the laws of the United States and of the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States, or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement."

Your intervenor avers that any change which is worked in the rates mentioned in the contract by the order of the Interstate Commerce Commission was anticipated by the parties themselves and such change is within the contemplation of the contract.

Your intervenor avers that under the terms of the contract with the Carpenter-O'Brien Company, referred to above, the rates known as the "Cummer Scale" were to be applicable until one billion (1,000,000,000) feet of timber has been cut. This, of itself, was an improper basis of rate [fol. 1233] making, and, this intervenor believes that the one billion feet has been either entirely cut or very nearly so.

Wherefore this intervenor prays that the bill be dismissed, and the prayers of the complainants be denied.

Georgia Public Service Commission, per Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

*Duly sworn to by Jas. A. Perry. Jurat omitted in printing.*

[fol. 1234] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

[fol. 1235]

II

Answering paragraphs III to XXXIII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated August 2, 1928, referred to in paragraph XIII, a copy of which is attached to and made a part of the bill of complaint as Appendix A; that said report and order were made and entered in a proceeding before the Commission entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, docket No. 18364, and said report is published at 146 I. C. C. 717-725; that the Commission refers the court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based; that in said proceedings the petitioners herein, Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company were, and each of them was, accorded a full hearing; that at hearings in said proceeding a large volume of testimony and other evidence

bearing upon the matters covered by said report and order was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of petitioners by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of August 2, 1928; that said report and [fol. 1236] order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of August 2 was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering paragraphs XVII to XXXIII, inclusive, of the bill of complaint, the Commision denies that said order of August 2 is either unlawful or void for the

reasons, or for any of the reasons, set forth in said para-
[fol. 1237] graphs. The Commission particularly denies that the petitioners, and denies that any of the petitioners, will suffer either irreparable damage or irreparable injury, as stated in paragraph XXXI of the complaint, unless said order of August 2 is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of August 2, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, of Counsel.

[fol. 1238] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[fol. 1239] IN UNITED STATES DISTRICT COURT

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[Title omitted]

ORDER CONSOLIDATING CAUSES—Jan. 3, 1929

On motion of Charles E. Cotterill, of counsel for the plaintiffs herein,

It is ordered that the above numbered and entitled causes be, and the same are hereby consolidated for the purpose of trial.

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[fol. 1240] Minute entries of argument and submission omitted in printing.

[fol. 1241] Item No. 8, of the Præcipe. (Omitted from this transcript.)

NOTE.—Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511 and 512, and so received, (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court).

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[fols. 1242-1250] Opinion omitted; printed side page 56 ante.

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[fol. 1251] IN UNITED STATES DISTRICT COURT

In Equity. No. 511

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, and CUMMER CYPRESS COMPANY, Complainants,

vs.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

DECREE—Filed Jan. 17, 1929

This case was submitted for final decree to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Benjamin C. Dawkins, United States District Judge, and Hon. Samuel H. Sibley, United States District Judge. After hearing evidence and argument, and the Court being fully advised, it is, for the reasons stated in an opinion this date filed, considered and decreed that the relief prayed by the complainants be denied and the bill be dismissed.

This 17 day of January, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1252] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REHEARING—Filed Feb. 21, 1929

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in chancery sitting:

Now comes Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company by their undersigned Solicitors of Record and file and present this their Petition for Rehearing in the above entitled cause, and as grounds therefor assert the following:

1. (a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with the order entered August 2nd, 1928, by the defendant, Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and thereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs, except cedar, and to put into effect on October 10th, 1928, between all points on its lines in intrastate traffic within the State of Florida, the same rates prescribed by the order of said Interstate Commerce Commission for application from all points on the lines of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

[fol. 1253] (b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission, did file with said Interstate Commerce Commission, its Supplements 4, 5, 6 and 7 to its Florida local Tariff No. 20, I. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of Florida for the intrastate

transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length", in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the order of said Interstate Commerce Commission for the transportation of logs, except walnut, cherry and cedar, from all points on its lines in and State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2nd, 1928 order of said Interstate Commerce Commission for application north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destination in the State of Georgia, were materially higher than the said Florida intrastate rates established under and pursuant to the Laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the Laws of Florida for the intrastate transportation of Short Logs as aforesaid.

(d) That such proceedings were had before the Interstate Commerce Commission so that the respective effective dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929.

2. That on the 17th day of January, A. D., 1929, this Court made and rendered its decision, opinion and decree in this cause; and in said decree specifically made its decision and opinion a part thereof. That in and by said de- [fol. 1254] cree, this Court construed "Said Order", in so far as the same was applicable to Intrastate rates in Florida, as limited to the territory specifically referred to by said Interstate Commerce Commission in fixing interstate rates from points in Florida to destinations in Georgia. That such construction and limitation was confined to one-way traffic north bound, in one direction only, from points

of origin north of and including Burnett's Lake, Florida, situate upon the line of the Atlantic Coast Line Railroad, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to and beyond Dupont, Georgia; and from points of origin north of and including Gainesville, Florida, upon the line of said Atlantic Coast Line Railroad, which extends northwardly from Gainesville, Florida, through Burnett's Lake, Florida, through Jacksonville, Florida, to and beyond Folkston, Georgia. That said order of August 2, 1928 with such construction and limitation was then upheld, and this Court in its decision and decree in substance, held said Interstate Commerce Commission intended to limit the intrastate rates prescribed in said order of August 2, 1928, to the territory specifically referred to therein for the fixing of interstate rates, which territory was described in this Court's opinion and is in this paragraph specifically set forth.

3. That after the rendition and entry of the decision, opinion and final decree of this Court herein the State of Florida, acting by and through its regulatory administrative body, to-wit: the Railroad Commission (hereinafter sometimes called Florida Commission), recognized that the said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, and on to-wit: the 30th day of January, 1929, did make and cause to be entered in the records of said Florida Commission an order wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates prescribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, of logs under the following tariff description, to-wit: "logs, except walnut, cherry and cedar, it carload quantities minimum weight 40,000 pounds" from points on [fol. 1255] the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission in so far as said Florida intrastate scale of rates applied to the

transportation of logs, except cedar, moving northbound, in one direction, from points of origin on the lines of the said Railroad Company north of Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

3. And having so recognized the binding force and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree of this Court, the said order of said Florida Commission did declare that all existing Florida intrastate rates for the transportation of logs, except cedar, and for the transportation of Short Logs, should continue in force and effect except to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as limited, for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court.

That a copy of the order No. 979 of the Florida Commission is hereto attached, marked Exhibit A, and made a part hereof.

4. That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket No. 18364 and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs intrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of said order of said Interstate Commerce Commission in territorial scope and otherwise, as is set forth in said decision, opinion and decree and hereinabove set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that said order of said Interstate [fol. 1256] Commerce Commission was applicable to the transportation of Short Logs and was applicable to the transportation of logs, except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge and collect, on and after February 8th, 1929, from all shippers of Short

Logs and all shippers of logs, except walnut, cedar and cherry, between all points on its lines in Florida, the same scale or rates prescribed by the order of said Interstate Commerce Commission for the transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

5. That under and pursuant to the Laws of Florida it is the duty of the Florida Commission in the name of the State of Florida, and in the Courts of the State of Florida, to enforce by injunction or otherwise, all intrastate rates established under and pursuant to the Laws of Florida except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit: January 31st, 1929, there was filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as Complainant, acting by and thru the said Florida Commission and the said Attorney-General, a certain Bill of Complaint against said Railroad Company as defendant, and wherein the relief sought was injunctions, temporary and permanent, enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8th, 1929, any rates or charges higher than the existing Intrastate Rates for the transportation of logs, except cedar, in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree held said order of said Interstate Commerce Commission to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 8, 1929, in intrastate traffic, the said scale of rates prescribed by said order of Interstate Commerce Commission except for the transportation, northbound, from points [fol. 1257] of origin within the area to which this Court held said order of August 2nd, 1928, to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates on Short Logs moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

6. That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit, set forth in Paragraph No. 5 hereof, from the said State Court to the United States District Court for the Southern District of Florida but said State Court denied said Petition for Removal and retained jurisdiction of said cause and thereupon the said State Court issued said injunctions substantially as was prayed.

7. That thereafter to-wit: on February 5th, 1929, the said Interstate Commerce Commission by its order dated that day did amend its said order of August 2nd, 1928, so that said last described order, as amended, should expressly declare that Short Logs were not within the purview thereof.

A true copy of said order dated February 5, 1929, is hereto attached as Exhibit B, and made a part hereof.

8. That thereafter, on February 7, 1929, the said Atlantic Coast Line Railroad Company, as Complainant, did file in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, R. S. Matthews and Marie C. Eaton, Members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State Court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie C. Eaton from proceeding further in the prosecution of said State Court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary bill to the Hon. W. B. Sheppard, Judge of the District Court [fol. 1258] of the United States for the Northern District of Florida, therefore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said court to issue the temporary injunctions therein prayed.

9. That on, to-wit: February 7, 1929, the said Railroad Company did likewise file in the United States District Court for the Northern District of Florida its original bill of complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of

this Court) did assert that the order of said Interstate Commerce Commission, dated August 2nd, 1928, required it to demand, charge and collect for the transportation of logs, except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida to all destinations on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by said order for application on interstate movements of logs except walnut, cherry and cedar, northbound, from all points of origin north of Jacksonville, Gainesville, Burnett's Lake and High Springs to destination in Georgia. And said Railroad Company in and by said bill, among other things, prayed that the said defendants therein named to be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines in Florida and any destination on its line in Florida, in any direction.

That on the same day, to-wit, February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Sheppard, on Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

10. That the said ancillary bill referred to in paragraph 8, above and the said bill referred to in paragraph 9 above were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said Court thereon the said Interstate Commerce Commission, without notice to your Petitioner, on, to-wit: February 7, 1929, did make and direct to be published at 10 o'clock a. m. on February 8, 1929, a certain order, wherein and whereby said Interstate Com- [fol. 1259] merce Commission did so amend its said order of August 2, 1928, so that the same, as amended required said Railroad Company to apply the scale of rates for the transportation of logs, except walnut, cherry and cedar logs and except short logs, moving in carload quantities, between all points of origin in the State of Florida on the lines of said Railroad Company in all directions to all destinations on the lines of said Railroad Company, in Florida, the same as said scale of rates prescribed by said order of August 2,

1928, for application to the transportation interstate of such logs in such quantities from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs north bound to destinations in Georgia. That a copy of said order of February 7, 1929, is hereto attached, marked Exhibit C and made a part hereof.

11. That, afterwards, to-wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said Bill so filed by said Railroad Company in the United States District Court for the Northern District of Florida were amended by said Railroad Company and answers and motions to dismiss were duly filed by your Petitioner to the said Bill and ancillary Bill as amended as aforesaid; and thereupon said United States District Courts respectively, did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the Petition of said Railroad Company, did allow an appeal from the decree of said last described Court to the United States Circuit Court of Appeals for the 5th Circuit and the said Appeal is now pending.

12. That while said order of February 7th, 1929 (Exhibit C), purports to be an amendatory order of the order of August 2nd, 1928, and was claimed to have been entered for the purpose of clarifying an alleged doubt that said Interstate Commerce Commission asserted had arisen, as to the [fol. 1260] territorial limits intended to be covered by that portion of its order of August 2, 1928, prescribing intrastate rates within the State of Florida, yet, nevertheless, said amendatory order of February 7, 1929, is in effect, and an attempt on the part of the Interstate Commerce Commission to retroactively conclude that intrastate rates "within and throughout the entire State of Florida, without exception," should be increased by said Order of August 2nd, 1928; and such order of February 7, 1929, was entered contrary to, and in derogation of this Court's decision, opinion and decree of January 17, 1929, and to repudiate such decree. That said order of February 7, 1929, was material,

was entered without notice, and said Interstate Commerce Commission was without power, authority and jurisdiction to make the same.

13. That said order of said Interstate Commerce Commission, as amended as aforesaid, insofar as it seeks to regulate intrastate rates in Florida, is null and void and of no force and effect for the several specific reasons set forth in your petitioners' bill of complaint heretofore filed herein, reference to which is hereby prayed as if the same was specifically set forth herein in hæc verba, and for said reasons and under said decision, opinion and decree of this Court ought to be wholly enjoined, set aside and annulled.

14. Your Petitioners herewith tenders and presents their supplemental bill in the nature of a bill of review wherein your petitioner- upon re-hearing seeks to restrain, enjoin, set aside, declare null and void and of no effect said order of the Interstate Commerce Commission of August 2nd, 1928, as amended by its order of February 7th, 1929.

Wherefore your petitioners pray as follows:

(a) That this Court entertain this Petition for rehearing.

(b) That the Final Decree of this Court entered January 17, 1929, be opened, vacated and set aside, and that a re-hearing be granted to your petitioner- herein.

(c) That your petitioners be permitted and allowed to file herein their supplemental bill in the nature of a bill of review which herewith is tendered and presented, to [fol. 1261] properly bring before this Court the new facts, matters and things herein specifically set forth, all of which are material and not cumulative; and all of which occurred after the rendition of this Court's decree on January 17, 1929; and had such facts, matters and things existed prior to January 17, 1929, a decree would have been entered in favor of your Petitioners.

(d) That the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, be ordered and required on a day certain to show cause why the prayers in this Petition should not be granted.

(e) That your Petitioners may have such other and further relief as to this Court may seem proper and the nature of the case may require.

And your Petitioners will ever pray, etc.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, W. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel for Petitioners.

[fol. 1262] *Duly sworn to by J. S. Foley. Jurat omitted in printing.*

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Exhibit "A" omitted; printed side page 92 ante.

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[fols. 1263-1268] EXHIBIT "B" TO PETITION FOR REHEARING

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 5th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of the record in the above entitled proceeding, and for good cause shown:

It is ordered, That the order heretofore entered in this proceeding on August 2, 1928, be, and it is hereby amended as follows: By inserting after "logs, except walnut, cherry, and cedar" in the second, third and fourth paragraphs of said order, the following: "and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length."

It is further ordered, That in all other respects said order shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1269] EXHIBIT "C" TO PETITION FOR REHEARING

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 7th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida;

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following: "within and throughout the entire State of Florida, without exception,".

By the Commission, division 4.

George B. McGinty, Secretary.

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[fol. 1270] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in chancery sitting:

Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, by their undersigned solicitors of record, bring this their Supplemental Bill of Complaint in the nature of a Bill of Review against the

United States of America and Interstate Commerce Commission, and thereupon your orators complaining say:

I

That heretofore, to-wit, on the 27th day of November, A. D. 1928, your orators filed in this same cause their Bill of Complaint (hereinafter sometimes called the "Original Bill") against the defendants herein, wherein and whereby your orators sought to annul, set aside and enjoin that part or parts of the order (hereinafter called "said Order") of the Interstate Commerce Commission entered by it on the 2nd day of August, A. D., 1928, in Docket #18364 entitled Georgia Public Service Commission vs. Atlantic Coast Line Railroad" (146 I. C. C. 717) insofar as "said Order" in anyway dealt with the Florida intrastate rates of the Atlantic Coast Line Railroad Company as affecting shipments of logs under such rates to your orators from their respective points of origin in Florida to their lumber mills in Florida as particularly described in said "Original Bill". [fol. 1271] That answers were filed by the defendants to said "Original Bill," and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your orators filed their aforementioned Bill of Complaint, two other Bills of Complaint were filed against the defendants herein; one by the State of Florida and the other by The Wilson Lumber Company. In each of the two last mentioned Bills of Complaint the matter involved and the relief prayed for was substantially similar to that prayed for in and by your orators' "Original Bill." That upon your orators' "Original Bill" and said two other Bills of Complaint coming on to be heard, the same were consolidated for the purpose of final hearing; and after due and regular notice, final hearing was had at New Orleans, Louisiana, before Judge Sibley, Walker and Dawkins, testimony was taken and said cases submitted. That thereafter, on the 17th day of January, A. D. 1929, an opinion was handed down in said cases so consolidated and orders entered dismissing each of said original bills, which said orders of dismissal by specific reference made the opinion of this Court a part thereof.

The aforesaid proceedings above enumerated all appear of record in this Court, and reference thereto is hereby specifically prayed.

II

That in and by its opinion this Court, to hold "said Order" valid, construed "said Order" insofar as it was applicable to intrastate rates in Florida, as being limited to the territory specifically referred to by the Interstate Commerce Commission in "said Order", fixing interstate rates from points in Florida to destinations in Georgia, such construction and limitation being confined to one way traffic north bound from points of origin north of and including Burnett's Lake, Florida, situate upon the line of said Atlantic Coast Line Railroad Company which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to DuPont, [fol. 1272] Georgia, and to one way traffic north bound from points of origin north of and including Gainesville, Florida, situate upon the line of said Atlantic Coast Line Railroad Company which extends northwardly from said Gainesville, Florida, through Burnett's Lake, Florida, through Jacksonville, Florida, to and beyond Folkston, Georgia. And thereupon and thereby "said Order" with such construction and limitation was upheld and said "Original Bill" dismissed.

III

That two other Supplemental Bills in the nature of Bills of Review are likewise being filed by The Wilson Lumber Company and by the State of Florida. That certain exhibits will be referred to and mentioned in each of such supplemental bills and likewise in this Bill. That only one set of exhibits will be filed in support of said three (3) Supplemental Bills, in order to avoid encumbering the record of said suits.

IV

(a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with "said Order" entered August 2nd, 1928, by the defendant

Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs except cedar, and to put into effect on October 10th, 1928, between all points on its lines in intrastate traffic within the State of Florida, the same rates which were prescribed by the order of said Interstate Commerce Commission for application northbound from points on the line of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

[fol. 1273] (b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission, did file with said Interstate Commerce Commission its Supplements 4, 5, 6 and 7 to its Florida local tariff No. 20, I. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida the scale of rates for many years in force and effect under the laws of Florida for the intrastate transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length," in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the "said Order" of said Interstate Commerce Commission for the transportation of logs except walnut, cherry and cedar, from all points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2, 1928, order of said Interstate Commerce Commission for application northbound from points north of and including

Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia, were materially higher than the said Florida intrastate rates established under *the* pursuant to the laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the laws of Florida for the intrastate transportation of Short Logs as aforesaid.

(d) That such proceedings were had before the Interstate Commerce Commission so that the respective effective dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929.

[fol. 1274] V

That after the rendition and entry of the decision, opinion and final decree of this Court herein, the State of Florida, in compliance therewith and recognizing that said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, on, to-wit: the 30th *say* of January, 1929, did make and cause to be entered by the Florida Railroad Commission an order, wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates proscribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, to-wit, of "logs, except walnut, cherry and cedar, in carload quantities minimum weight 40,000 *points,*" from points on the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destination- on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission insofar as said Florida intrastate scale of rates applied to the transportation of logs except cedar moving northbound, in one direction, from points of origin on the lines of the said Railroad

Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

VI

And having so recognized the binding force and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree of this Court, the said order of said Florida Railroad Commission did declare that all existing Florida intrastate rates for the transportation of logs except cedar, and for the transportation of Short Logs, should continue in force and effect except to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as [fol. 1275] limited, for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court,

That a copy of the order #979 of the Florida Commission is herewith tendered as Exhibit A, and made a part hereof.

VII

That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket #18364, and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs intrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of "said Order" in territorial scope and otherwise, as is set forth in said decision, opinion and decree and as hereinbefore set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that "said Order" was applicable to the transportation of Short Logs and was applicable to the transportation of logs except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge

and collect, on and after February 8th, 1929, from all shippers of Short Logs and all shippers of logs except walnut, cherry and cedar, between all points on its lines in Florida, the same scale of rates prescribed by the order of said Interstate Commerce Commission for transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

VIII

That under and pursuant to the laws of Florida it is the duty of the Railroad Commissioners, in the name of the State of Florida and in the Courts of the State of Florida, to enforce, by injunction or otherwise, all intrastate rates established under and pursuant to the laws of Florida, except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit: January 31, 1929, there was [fol. 1276] filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as complainant acting by and through the said Railroad Commissioners and the said Attorney General, a certain Bill of Complaint against said Railroad Company as defendant, wherein the relief sought was injunctions, temporary and permanent enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates for the transportation of logs except cedar in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree, held "said Order" to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 7, 1929, in intrastate traffic, the said scale of rates prescribed by "said Order," except for the transportation, northbound, from points of origin within the area to which this Court held "said Order" to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates

on Short Logs moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

IX

That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit from the said State court to the United States District Court for the Southern District of Florida, but said State Court denied said Petition for Removal and retained jurisdiction of said cause, and thereupon the said State Court issued said injunctions substantially as was prayed.

A photostatic transcript of record in said State Court suit is herewith tendered as Exhibit B, and made a part hereof as is specifically set forth herein.

[fol. 1277]

X

That thereafter, to-wit, on February 5, 1929, the said Interstate Commerce Commission by its order dated that day did amend "said Order" of August 2nd, 1928, so that said last described order, as amended, should expressly declare that Short Logs were not within the purview thereof.

A true copy of said order of February 5, 1929, is herewith tendered as Exhibit C, and made a part hereof as if specifically set forth herein.

XI

That thereafter, on February 7, 1929, the said Atlantic Coast Line Company as Complainant, did file, in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, H. S. Matthews and Marie C. Eaton, members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie C. Eaton from proceeding further in the prosecution of said State court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to

be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary bill to the Honorable W. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida, theretofore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said Court to issue the temporary injunctions therein prayed.

XII

That on, to-wit: February 7, 1929, the said Railroad Companp did likewise file, in the United States District Court for the Northern District of Florida, its original Bill of Complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of this Court) did assert that the order of said Interstate Commerce Commission dated August 2nd, 1928, required [fol. 1278] it to demand, charge and collect for the transportation of logs except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by the said order for application on interstate movements of logs except walnut, cherry and cedar, northbound, from all points of origin on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia. And said Railroad Company in and by said bill, among other things, prayed that the said defendants therein named be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines and any destination on its lines in Florida, in any direction.

That on the same day, to-wit February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Sheppard as Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

XIV

That the said ancillary bill referred to is paragraph XI, above, and the said bill referred to is paragraph XII,

above, were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said Court thereon, the said Interstate Commerce Commission, without notice to your orators, on to-wit: February 7, 1929, did make and direct to be published at 10 o'clock a. m. on February 8, 1929, a certain order, wherein and whereby said Interstate Commerce Commission did so amend "said Order" of August 2, 1928, so that the same as amended required said Railroad Company to apply the scale of rates for the transportation of logs except walnut, cherry and cedar logs and except short logs, moving in carload quantities, between all points of origin in the State of Florida on the lines of said Railroad Company in all directions to all destinations on the lines of said Railroad Company in Florida, the same as said scale of rates prescribed by "said Order" of August 2, 1928, for application to the transportation interstate of such logs in such quantities [fol. 1279] from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, northbound to destinations in Georgia.

A true copy of said Amendatory Order of February 7, 1929, is herewith tendered as Exhibit D, and made a part hereof as if specifically set forth herein.

That afterwards, to-wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said bill so filed by said Railroad Company in the United States District Court for the Northern District of Florida were amended by said Railroad Company and answers and motions to dismiss were duly filed by your Orators to the said bill and ancillary bill as amended, as aforesaid; and thereupon said United States District Courts respectively did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That complete copies of the record in each of said cases set forth in paragraphs number XI and XII are herewith tendered as Exhibits E and F and are made a part hereoof as if specifically set forth herein.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the

Petition of said Railroad Company, did allow an appeal from the decree of said last described Court to the United States Circuit Court of Appeals for the 5th Circuit, and the said appeal is now pending.

XV

That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court prior to said amendment of February 7, 1929; and said order, as amended as aforesaid, constitute an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Atlantic [fol. 1280] Coast Line Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

XVI

That your orator brings this Supplemental Bill to set forth the new facts, matters and things that have occurred and taken place since this Court's decision, opinion and decree of January 17, 1929, and to enjoin, set aside, annul and suspend the report and "said Order" of the Interstate Commerce Commission of August 2nd, 1928, as amended by the order of February 7, 1929, insofar as such report and order as amended in any way dealt with the Florida intrastate rates of the Atlantic Coast Line Railroad Company as affecting shipments of logs under such rates to your orators from their respective points of origin in Florida to their lumber mills in Florida.

That report and "said Order" as amended as aforesaid with respect to the Florida intrastate rates on logs was and is arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful for the reasons following; among others, to-wit:

(a) Such report and "said Order" as amended as aforesaid are unlawful because under the facts of record in such

proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order.

(b) Such report and "said Order" as amended as aforesaid are unlawful because there was no substantial evidence before the Interstate Commerce Commission, nor did that tribunal find that there was any substantial evidence before it showing or tending to show that there was or could by any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage of Georgia shippers in violation of Sections 3 and 13 of the Interstate Commerce Act.

[fol. 1281] Such report and "Said Order" as amended as aforesaid are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(d) Such report and "Said Order" as amended as aforesaid are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

(e) Such report and "Said Order" as amended as aforesaid are unlawful because thereby the Interstate Commerce Commission has sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no case or controversy

submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within the so-called northern portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate [fol. 1282] Commerce Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 of the Interstate Commerce Commission Act. Therefore, such order unlawfully embraces within its territorial scope freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

(f) That said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the said Commission was and is without jurisdiction to enter its said order.

(g) That said action of the said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

(h) That the Amended Order of February 7, 1929, attempted to retroactively conclude the rates on logs "within and throughout the entire State of Florida, without exception", should be increased by the order of August 2, A. D. 1929.

(i) That the amended Order of February 7, 1929, was material, was entered without notice, and said Interstate Commerce Commission had no power, authority or jurisdiction to make the same.

XVII

That "said Order" as amended as aforesaid required the Atlantic Coast Line Railroad Company to put into effect materially higher rates for the transportation of logs than those heretofore paid by your orators: that thereby irreparable damage and injury is being done to your ora- [fol. 1283] tors for that said materially higher rates have caused and are now causing your orators to suspend their logging operations, cease transporting logs, abandon their mill operations, planning on the relocation of their mills at the sources of the timber supply, involving the expenditure of millions of dollars; and that hundreds of people are being turned out of employment and that such damage to your orators and to the people thus becoming unemployed and to the public institutions of the State of Florida could not be compensated for by any suit or suits at law, and that your orators have no plain, adequate and complete remedy at law available to them.

Forasmuch, therefore, as your orators are without remedy save in a Court of Equity and to the end that the defendants, the United States of America and the Interstate Commerce Commission, and the Intervener, Georgia, Public Service Commission, and each of them, may, if they can, show why your orators should not have the relief herein prayed, and may full, true, direct and perfect answers make to this Supplemental Bill, to the best and utmost of their respective knowledge, remembrance, information and belief to each and every of the matters herein set forth, as if specifically interrogated.

Your orators would therefore pray:

First. That process may issue against the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, with service thereof and of this Supplemental Bill in the manner prescribed by statute in such cases made and provided.

Second. That this Honorable Court will grant to your orators an interlocutory order enjoining, setting aside and suspending the enforcement of such part or parts of said

order of August 2nd, 1928, of the said Interstate Commerce Commission as amended by said order of February 7th, 1929, affecting Florida Intrastate rates as alleged to be unlawful, and the operation and effectiveness of any rate [fol. 1284] or schedule of rate findings filed with said Interstate Commerce Commission in purported compliance therewith; and that such interlocutory order continue in force and effect until the further order of this Court.

Third. That upon final hearing this Court make and enter a decree and order enjoining, setting aside, annulling and suspending the enforcement of such part or parts of said order of August 2nd, 1928, as amended by the said order of February 7th, 1929, as hereinbefore described, affecting Florida intrastate rates alleged to be unlawful, and the operation and effectiveness of any rate or schedule of rate findings filed with the said Interstate Commerce Commission in purported compliance therewith.

Fourth. That your orators may have such other and further relief in the premises as to this Honorable Court shall seem meet and proper, and as equity and good conscience may require.

And your orators will ever pray, etc.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, R. W. Mitchell, Solicitors for Complainants. Chas. A. Cotterill, Atlanta, Ga.; August G. Gutheim, 8 Jackson Place, Washington, D. C., of Counsel for Complainants.

[fol. 1285] *Duly sworn to by J. S. Foley. Jurat omitted in printing.*

Received in Clerk's Office Feb. 21, 1929.

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[fol. 1286] Item No. 12 of the Præcipe

12. Supplemental Bill of Complaint, tendered by Complainants February 21, 1929, and filed on said date, together with the Exhibits therein mentioned and made a part thereof, said Exhibits being marked Exhibits A, B, C, D, E, and F to said Supplemental Bill.

NOTE.—Said Exhibits markes A, B, C, D, E, and F to said Supplemental Bill are the identical documents described respectively in Item 12 of the documents in No. 514 as Exhibits A, B, C, D, E, and F to the Supplemental Bill of Complaint of the State of Florida, et al., and are here incorporated by reference thereto.

Above mentioned Exhibits "A, B, C, D, E, and F" are omitted from this transcript.

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[fol. 1287] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR INJUNCTION—Filed Mar. 1, 1929

To the Attorney General of the United States, the Interstate Commerce Commission, the Georgia Public Service Commission:

You will hereby take notice that the complainant herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at New Orleans, Louisiana, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a part of that certain order entered by the Interstate Commerce Commission on the 2nd day of August, 1918, in Docket No. 18364, and the amendment thereto of February 7, 1929, all of which is described in the original bill of complaint herein and in the supplemental bill of complaint in the nature of a Bill of Review and in the Petition for Rehearing, copies of which have been served upon you; and that said application will be heard at New Orleans, Louisiana, at 10 o'clock, A. M. on the 7th day of March, 1929.

Dated this — day of February, 1929.

Edward P. Sanborn, Geo. L Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Complainants. Chas. E. Cotterill, August G. Gutheim, of Counsel for Complainants.

[fol. 1288] Service, by copy, of the within application and notice is hereby acknowledged this 26th day of February, 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the Attorney General of the United States. J. Stanley Payne, for the Interstate Commerce Commission. Jas. A. Perry, Chairman, for the Georgia Public Service Commission.

This Mch. 1st, 1929.

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[fol. 1289] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENTERTAINING PETITION FOR REHEARING AND TO SHOW CAUSE—Filed Feb. 1, 1929

This cause came on to be heard upon petition for a rehearing herewith presented, and it appearing to the Court that new and additional facts and matters have developed since this Court's decision and final decree entered herein on January 17, A. D. 1929, and it further appearing that the term of this Court at which said opinion and decree was entered has not expired, upon consideration,

It is, therefore, ordered and decreed:

1. That this Court does hereby entertain said Petition for re-hearing

2. That the defendants, the United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, and each of them, be and they are each hereby ordered and required to show cause, if they can, on the 7th day of March, A. D. 1929, at New Orleans, La.

(a) Why the decree of this Court heretofore entered January 17, 1929 should not be opened, vacated and set aside.

(b) Why a re-hearing should not be granted herein.

(c) Why the complainant should not be permitted and allowed to file herein its supplemental bill in the nature of a bill of review tendered and presented with said Petition for re-hearing;

[fol. 1290] (d) Why the prayers of said Petition for rehearing, each and every, should not be granted.

3. That a copy of this Order and said Petition for rehearing be served upon the defendants, the United States of America and Interstate Commerce Commission, and the intervener, Georgia Public Service Commission.

Done and ordered this — day of February, A. D., 1929.
R. W. Walker, United States Circuit Judge. Sam'l H. Sibley, United States District Judge. Ben C. Dawkins, United States District Judge.

Received copy of the foregoing Order and likewise copies of the Petition for Rehearing and the Supplemental Bill mentioned therein and accept service thereof this the 26 day of February, A. D. 1929.
Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. J. Stanley Payne, for the Interstate Commerce Commission. Georgia Public Service Commission, by Jas. A. Perry, Chairman.

This Mch. 1, 1929.

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[fol. 1291] In United States District Court

[Title omitted]

Return to Rule to Show Cause

Now comes the United States of America, defendant in the above entitled proceeding, and for its Return to Rule to Show Cause issued against it herein, says:

United States assents to (a) opening of the decree of this Court entered herein on January 17, 1929; (b) granting of a re-hearing herein; (c) the filing by Petitioner of its supplemental bill in the nature of a bill to review presented with its petition for rehearing.

United States further says, in response to the Rule to Show Cause, that in so far as the Court's said final decree herein dismissed Petitioner's original bill, said decree is

just, proper and correct and, therefore, should be affirmed upon rehearing, notwithstanding the new matters and things alleged in the supplemental bill. But, inasmuch as this Court, in dismissing said original bill, so construed the order of the Interstate Commerce Commission issued August 2, 1928, as to restrict and limit the state-wide scope and effect of said order, as affecting intrastate rates on logs transported by the Atlantic Coast Line Railroad Company, and thus, in effect, annulled said order to the extent of [fol. 1292] such restriction and limitation, United States prays that the Court, in reconsidering this cause, give full effect to said order by holding that it validly and lawfully requires said intrastate rates to be increased from and to all points on the Atlantic Coast Line Railroad Company's lines within and throughout the State of Florida, and, thereupon, affirm its decree dismissing said original bill.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Received in Clerk's Office March 27, 1929.

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[fol. 1293] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES TO THE SUPPLEMENTAL BILL OF COMPLAINT

United States for answer to the supplemental bill filed herein against it says:

I

United States admits the allegations of paragraphs I, II, III and IV.

II

United States has not sufficient knowledge or information to form a belief concerning the allegations of paragraphs V and VI and, therefore, neither admits nor denies those allegations.

III

Answering paragraph VII United States admits that the Interstate Commerce Commission issued the order therein

described on February 15, 1929, in which it excepted from its order of August 2, 1928, the following, "ash, gum, hickory, oak, pine and cypress logs not over six feet in length." As to the other allegations made in said paragraph United States has not sufficient knowledge or information to form a belief and, therefore, neither admits nor denies them.

IV

United States has not sufficient knowledge or information to form a belief concerning the allegations in paragraphs VIII, IX, XI and XII, and as to them, therefore, it neither admits nor denies.

V

For answer to paragraph X United States says that the Interstate Commerce Commission on February 7, 1929, issued the order therein referred to and alleges that said order is in the following words:

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida.

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby, changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following "within and throughout the entire State of Florida, without exception." [fol. 1294] United States, for answer to paragraph XVI (the copy of supplemental bill served upon the United States contains no paragraph numbered XIII), says it has no information, knowledge or belief as to whether, when, or how the ancillary Bill mentioned in paragraph XI or the Bill mentioned in paragraph XII were presented to the court alleged, or to any court.

Further answering said paragraph XIV United States says that the Interstate Commerce Commission on Febru-

ary 7, 1929, did make and issue the order mentioned in that paragraph which said order is quoted in paragraph V of this answer.

And for a further answer to paragraph XIV United States says that no further "investigation or proceeding whatsoever" was necessary or required by law or otherwise, preceding the issuance of the order of February 7, 1929, and that said order was merely a restatement and reiteration by the Interstate Commerce Commission of the requirement contained in its order entered August 2, 1928, directing the Atlantic Coast Line Railroad Company as follows:

It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

United States has not sufficient knowledge or information to form a belief concernnig the remaining allegations of paragraph XIV and therefore neither admits nor denies them.

VII

United States, answering paragraph XV, denies that the purpose, intent and effect of the order issued February 7, 1929, was or is "to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court;" and alleges that the purpose and intent of the order issued February 7, 1929, was to reiterate and restate beyond possible misconception that by its order of August 2, 1928, the Interstate Commerce Commission intended to and did require the Atlantic Coast Line Railroad [fol. 1295] Company to establish, publish and maintain the

intrastate rates in question throughout the State of Florida and not merely from and to intrastate points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Spring.

VIII

United States denies each and every allegation made and contained in paragraph XVI. United States alleges, in further answer to paragraph XVI, that the order of August 2, 1928, as amended, was issued by the Interstate Commerce Commission upon complaint alleging, among other things, violations of Sections 3 and 13 of the Interstate Commerce Act, and upon its finding of fact made and entered upon the record before it that the intrastate rates complained of resulted in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce; and that the power thus exercised by the Interstate Commerce Commission in making said order is expressly granted to it by Sections 3 (1), 13 (4) and 15 (1) of said Act and does not constitute an unconstitutional or other unlawful invasion of the sovereign rights of the State of Florida.

IX

For answer to paragraph XVII, United States denies that complainants are suffering or will suffer irreparable, or other, legal injury or damage because of the enforcement of said order, as amended.

X

Except as herein expressly admitted, United States denies the truth of each and every allegation and conclusion contained in the supplemental bill in so far as they conflict either with the allegations herein, or with the statements or conclusions of facts included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the supplemental bill be dismissed at the cost of the com-

plainants and for such other and further order as may be [fol. 1296] appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

*Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

Received in Clerk's Office Mar. 27, 1929.

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[fol. 1297] In United States District Court

[Titles omitted]

Order Granting Rehearing, etc.—March 7, 1929

The above numbered and entitled causes came on this day to be heard upon the petition filed on behalf of the complaintants for a rehearing herein and for leave to file a supplemental bill of complaint, and also, upon the motion of the Atlantic Coast Line Railroad Company for leave to intervene.

And, upon consideration thereof;

It is ordered that the petition of the complainants be granted, that the causes be re-opened and that complainants are permitted to file their supplemental bill of complaint herein.

It is further ordered that the motion of the Atlantic Coast Line Railroad Company be granted, and accordingly that the petition of intervention of said Atlantic Coast Line Railroad Company be filed of record.

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[fol. 1298] Minute entries of argument and submission omitted in printing.

[fols. 1299 & 1300] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REFERRING INTERVENTION TO TRIAL ON MERITS—Mar. 7, 1929.

Whereupon, after hearing argument of solicitors for the parties in interest, and on consideration thereof, it is ordered that the intervention herein, be referred to the trial of this case on the merits.

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[fol. 1301] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

(1) It is interested in the above entitled proceeding. It was the respondent in cause No. 18364 before the Interstate Commerce Commission, in which the Georgia Public Service Commission was the complainant. It is affected by the order of the Interstate Commerce Commission made in said cause and will be affected by any order which this court may enter thereunder.

(2) Wherefore petitioner prays that it be allowed to intervene in this cause.

Atlantic Coast Line Railroad Company, by F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Attys.

The foregoing petition is granted and the Atlantic Coast Line Railroad Company is allowed to intervene in this cause.

This 7 day of March, 1929.

Sam'l H. Sibley.

Received in Clerk's Office March 27, 1929.

[fol. 1302] IN UNITED STATES DISTRICT COURT

[Title omitted]

To the Honorable the Judges of the District Court for the Northern District of Georgia:

PRELIMINARY MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY AS TO REHEARING

Now comes the Atlantic Coast Line Railroad Company, the Intervenor in the above mentioned cause, and before pleading to the merits of this case respectfully represents unto this court as follows:

1

The supplemental pleadings in this case show that on the 30th day of January, 1929, the Railroad Commissioners of Florida caused to be entered an order (No. 979) wherein and whereby they undertook to declare that all then existing Florida intrastate rates for the transportation of logs of the kind involved in this cause should continue in force and effect throughout the State, except to the very limited extent set out therein. The said order No. 979 purports to be effective over all the lines of the Atlantic Coast Line Railroad Company in the State of Florida for the trans-[fol. 1303] portation of logs, except cedar, moving northward in one direction from points of origin on the lines of the Atlantic Coast Line Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

2

The supplemental pleadings also show that the Railroad Commissioners of Florida filed suit in the Circuit Court of Duval County, Florida, in the name of the State of Florida, wherein the Atlantic Coast Line Railroad Company has been restrained from enforcing any rates on logs in Florida except those set out in the said order No. 979 of the said Florida Railroad Commission, and that interlocutory injunction was granted thereon against the Atlantic Coast Line Railroad Company.

3

The supplemental pleadings further show that an ancillary bill was filed in connection with removal proceedings and the District Court of the United States for the Southern District of Florida denied to the Atlantic Coast Line Railroad Company an order restraining and enjoining the persons who are the Railroad Commission of Florida from enforcing the above mentioned injunction and dismissed this Intervenor's said ancillary bill.

4

The said supplemental pleadings also show that this Intervenor filed its bill in the United States District Court for the Northern District of Florida, seeking to restrain [fol. 1304] by injunction the enforcement of the said order No. 979 of the Florida Railroad Commission. The said bill was filed on the ground that said order was unconstitutional in that it conflicted with the commerce clause of the Constitution of the United States and the Acts of Congress made in pursuance thereof, especially the Act of Congress known as the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto, and particularly Section 13, sub-paragraph 4 thereof. The Judge of said United States District Court refused to call together three Judges for the trial of said cause, and dismissed Intervenor's said bill.

5

Intervenor alleges that the order of the United States District Court for the Southern District of Florida, above mentioned in the ancillary proceedings, has been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and a restraining order has been granted thereon until the further order of that Court, restraining the enforcement of the said order No. 979 and of the said order of the Circuit Court of Duval County, Florida, restraining the persons who are the Florida Railroad Commission from enforcing said order No. 979 and the said order of the Circuit Court of Duval County, Florida.

6

A motion to be allowed to file a petition for writ of mandamus has been filed by this Intervenor in the Supreme

Court of the United States, seeking a writ of mandamus to the Honorable, the Judge of the United States District Court for the Northern District of Florida, and to the [fol. 1305] State Court, requiring the Judge of said Court to call together two other Judges to his assistance to hear this Intervenor's said bill. The determination of Intervenor's motion has not yet been had, insofar as Intervenor is informed.

7

Intervenor alleges that this extraordinary and unusual condition has been brought about by the same complainants who are now seeking discretionary remedies from this Court, including the re-opening of the final decree dismissing their bill, and also seeking discretionary relief by injunction.

8

Intervenor alleges that said order of the Florida Railroad Commission was illegal; that the order of the Circuit Court of Duval County, Florida, was illegal; and the said order of the United States District Court for the Northern District of Florida was likewise illegal, for that the said Court, presided over by one Judge, had no jurisdiction to enter the order which was entered, and which is above referred to. Nevertheless, each of said orders and judgments is being relied upon by complainants, and neither judgment has been reversed.

9

Intervenor avers that it is impracticable for this Court to give full relief in this situation while the above mentioned proceedings remain in the condition above described. If the order of the Circuit Court of Duval County, Florida, remains in force this Intervenor is enjoined, and will continue to be enjoined, from complying with any order which this Court may make in this cause, except insofar as it may [fol. 1306] happen to coincide with that order. If the Florida Commission's order is in force the Interstate Commerce Commission's order cannot go into effect, except in the said limited territory. If the order of the District Court of the United States for the Northern District of Florida remains in effect this Intervenor is further embar-

rassed thereby. The complainants are thus seeking to impede the exercise of the jurisdiction of this court in the premises, unless that jurisdiction be exercised according to their conception of their rights.

10

This situation can be remedied by the act of the complainants.

11

Intervenor respectfully avers that the motion for rehearing and the supplemental pleadings of the complainants in this cause should not be considered by this court until the complainants have removed those things which embarrass this court in the determination of the subject matter.

Wherefore this Intervenor respectfully prays that this Honorable Court do grant the petition to reopen this case or to grant a rehearing, or to otherwise proceed therein, until the complainants shall have removed or caused to be removed the orders, judgments and decrees above referred to, or until they shall have done those things which may be required by this court, necessary to remove the conflict of jurisdiction which has been caused by the said proceedings; and that none of the prayers of the complainants be considered unless and until the conditions referred to be relieved by them.

Respectfully submitted.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Counsel for Atlantic Coast Line Railroad Company.

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Received in Clerk's Office March 27, 1929.

[fol. 1307] Answer of Atlantic Coast Line Railroad Company, Intervenor

In United States District Court

[Title omitted]

Now comes the Atlantic Coast Line Railroad Company, the intervener in the above entitled cause, and answers the

pleadings which are filed as a supplemental bill, and for answer says:

I

(a) This intervenor was the defendant in cause No. 18364 in the Interstate Commerce Commission in which the Georgia Public Service Commission was the petitioner.

(b) Intervenor owns and operates about 2,200 miles of rail line in the State of Florida; that it does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. It operates about 5,100 miles of its own line of rail, and that it is engaged in interstate and intrastate common carriage by railroad.

[fol. 1308] (c) Intervenor admits the filing of the bill in the United States District Court for the Northern District of Georgia, as set out in paragraph I of the bill in this cause. The bill itself is referred to for its contents.

(d) It is admitted that answers were filed to said bill by the United States of America and the Interstate Commerce Commission, and that the Georgia Public Service Commission intervened and filed its answer.

(e) It is admitted that two other bills were filed at the same time and in the same court. It is admitted that there was a hearing in said cause as to set out in paragraph I of the bill in this case and that an opinion was handed down and that a decree was rendered dismissing each of the original bills. The decree and the opinion are referred to.

II

Intervenor denies the allegations of paragraph II of the bill in this case and more fully answers the same hereinafter.

III

Allegations of paragraph III of the bill require no answer.

IV

(a) Intervenor did file prior to October 5, 1928, with the Interstate Commerce Commission its tariff described in paragraph IV, sub-division "a" of the bill in this case, the object of which was to put into effect the rates prescribed by the Interstate Commerce Commission in its order entered August 2, 1928, in its aforementioned proceedings No. 18364. The said rates are now in effect. The said filing [fol. 1309] was made with the Interstate Commerce Commission in compliance with that Commission's order of August 2, 1928.

(b) This intervenor did prior to October 5, 1928, file with the Interstate Commerce Commission its tariffs, putting into effect in intrastate commerce the rates on short logs described in paragraph IV-B of the bill; the said filings have been cancelled as to such intrastate transportation on the logs described in said bill as short logs. This was done because of the order of the Commission entered in said cause on the 5th day of February, 1929, which order was to the effect that the said short logs were not within the terms of the said order of August 2, 1928.

(c) The rates on said short logs above referred to were higher than those which had theretofore appertained in Florida intrastate transportation over the lines of this intervenor.

(d) The effective dates of the new rates were postponed until February 8, 1929.

V

The allegations of paragraph V of the bill are denied except that on the 30th day of January, 1922, the Railroad Commissioners of Florida entered what they termed to be an order, effective instanter, which dealt with the subject matter of the transportation of logs. That action of the Florida Commissioners did not recognize that the decision, opinion or decree of this Court was the law of the land but it is and was in direct violation thereof and was in mis-application and in mis-use of the decision of this court and of the Interstate Commerce Commission. This will be further [fol. 1310] dealt with hereafter. The Florida Commis-

sioners had no power or authority to issue said writing and it was null from the beginning.

VI

The allegations of paragraph VI of the bill are denied except that the Florida Commissioners did enter a writing which they called their order No. 979, which writing this intervenor avers was not for the purpose of giving force or effect to any order of the Interstate Commerce Commission or of this Court but for the purpose of breaking down both; and if the said order No. 979 should become effective the result would be practically a complete nullification of the order of this Commission and of the said order of this Court entered on the 17th day of January, 1929. It would have left no traffic, or practically no traffic, to be affected by the order of the Interstate Commerce Commission.

VII

The allegations of paragraph VII as pleaded are denied. On the 5th day of February, 1929, the Interstate Commerce Commission issued its supplemental order, declaring, in effect, that the logs, which are sometimes referred to as short logs, were not affected by its order of August 2, 1928. Until that date there had been no official action of the Commission on the subject. When that action was taken by the Interstate Commerce Commission, intervenor immediately conformed thereto.

VIII

The allegations of paragraph VIII of the bill are denied as pleaded. It is not made the duty of the Railroad Commissioners to proceed in the name of the State of Florida, as is set out in said paragraph. There is a discretion con- [fol. 1311] ferred by statute in said Commissioners to a certain extent and in a certain way, as is mentioned in the statute. It is denied that the Railroad Commissioners of Florida proceeded in pursuance of any duty so imposed as is set out in said paragraph VIII. The Florida Commissioners did file a bill in the Circuit Court of Duval County, Florida, as is referred to in said paragraph, and this was done in their own name and in the name of the State of

Florida. The purpose of said bill was to enforce the aforementioned writing of the Commission called its order No. 979, which was void from its beginning, and to thereby annul for all practical purposes the said order of the Interstate Commerce Commission.

IX

It is true that this intervenor on the 4th day of February, 1929, filed in its petition and bond for the removal of said last described suit to the United States District Court for the Southern District of Florida and that the removal was denied by the State Court. Immediately thereafter this intervenor caused the record in said proceedings in the Circuit Court of Duval County, Florida, to be filed in the said United States District Court for the Southern District of Florida, and thereupon the Circuit Court of Duval County, Florida completely lost jurisdiction of the said cause by the proceedings to remove, if any it ever had. Notwithstanding that, the State Court did proceed and did issue an injunction restraining and enjoining this intervenor from complying with the order of the Interstate Commerce Commission. The said State Court had no jurisdiction of the said cause from the beginning because the subject matter of the suit was an effort to annul or suspend in whole or in part an [fol. 1312] order of the Interstate Commerce Commission over which it never had jurisdiction and its proceedings were utterly void.

X

Allegations of this paragraph X have been heretofore answered.

XI

It is admitted that an ancillary petition or bill was filed in the United States District Court for the Southern District of Florida against the members of the Railroad Commission of Florida, as is set out in paragraph XI, seeking to restrain and enjoin the members of the Railroad Commission from prosecuting the said suit in the Circuit Court of Duval County, Florida, and this intervenor did move the Court for a temporary restraining order and injunction, as is set out in said paragraph.

XII

This intervenor did on February 7, 1929, file in the United States District Court for the Northern District of Florida, its bill in which it did assert that the order of the Interstate Commerce Commission of August 2, 1928, did require it, and does require it, to demand, charge and collect for the transportation of logs of the kind mentioned in and covered by said order as construed by the order of February 5, 1929, and it further alleged that the writing called order No. 979 of the Florida Railroad Commissioners was void. Intervenor did seek a restraining order and injunction, as is set out in this paragraph. The said matter did come on for hearing before the Honorable Wm. B. Sheppard, Judge of the said District Court, on February 7, 1929.

[fol. 1313] XIII

There is no paragraph numbered XIII in said bill.

XIV

The ancillary bill referred to in paragraph XI of the bill and the bill referred to in paragraph XII were presented to Hon. Wm. B. Sheppard, Judge as aforesaid, at the same time. During the progress of the hearing of the said cause and on the 7th day of February, 1929, the Interstate Commerce Commission issued its order amending or clarifying its order of August 2, 1928, so that the rates intrastate on logs prescribed by the said order were made to apply over all of the lines of your intervenor in the State of Florida for intrastate transportation of such logs. On February 8, 1929, and during the progress of the trial of said cause, intervenor amended its bill so as to set out said order of the Interstate Commerce Commission of February 7, 1929, and thereupon answers and motions to dismiss, which were filed by complainants in this case, were made applicable to the bill as amended and the United States District Court did then deny the prayers of intervenor in both bills and did dismiss each of them. Appeals were taken on February 13, 1929, to the Honorable, the Circuit Court of Appeals for the Fifth Circuit, and on the 14th day of February, 1929, that Court entered its order restraining the appellee from en-

forcing the order of the Circuit Court of Duval County, Florida, hereinbefore referred to, and from enforcing the aforementioned writing called order No. 979 of the Florida Railroad Commission, the District Court having refused this relief. Said restraining order is in full force and effect and it is the only thing which prevents the utmost confusion [fol. 1314] over this subject matter and the conflict of the jurisdictions of the United States and of the State of Florida.

XV

The allegations of paragraph XV of the bill as pleaded are denied. The purpose of the order of the Interstate Commerce Commission of August 2, 1928, was to fix intrastate rates for transportation over the lines of the Atlantic Coast Line Railroad Company in Florida of logs of the kind covered by the said order and the report accompanying the said order. That order was made on ample evidence which not only justified the order but required its entry.

XVI

This intervenor denies that the order of the Interstate Commerce Commission of August 2, 1928, is void for any of the reasons set forth in this paragraph of said bill, and avers that said order of said Commission is valid and of full force and effect.

Further answering said paragraph, intervenor denies that said order of the Interstate Commerce Commission is void because of any matter or thing set out in sub-paragraphs A, B, C, D, E, F, G, H or I of the said paragraph XVI of said bill.

XVII

Intervenor denies the allegations of paragraph XVII of the supplemental bill, except that the order of the Interstate Commerce Commission does require the Atlantic Coast Line Railroad Company to put into effect materially higher rates for transportation of logs intrastate in Florida over its lines. Intervenor avers that this is necessary in order

to prevent undue, unreasonable and unjust discrimination [fol. 1315] against interstate commerce.

Further answering the supplemental bill this intervenor says:

XVIII

The order of the Interstate Commerce Commission was issued after an investigation and the taking of a good deal of evidence orally and by way of statistical data. Petition was filed by the Georgia Public Service Commission with the Interstate Commerce Commission in May, 1926, and an order was rendered on August 2, 1928. In the meantime evidence was taken before an Examiner of the Commission on October 20th, 21st and 22nd, 1926, at Valdosta, Georgia. Further evidence was taken in Jacksonville, Florida, before an Examiner of the Commission on January 18th, 19th, 20th and 21st, 1927. There were 53 exhibits offered and received in evidence. There were about 30 witnesses examined. The subject was investigated with great detail. Many shippers and carriers intervened in said cause and the Florida Railroad Commissioners appeared in defense of the then Florida rates which were in question.

XIX

Ample evidence was offered and received not only to justify, but to require, the order of the Interstate Commerce Commission; which order notified and required this intervenor to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain in intrastate commerce within the State of Florida those rates which this intervenor has put into effect and is [fol. 1316] maintaining on logs, except walnut, cherry and cedar, and which rates are otherwise described in the pleadings in this cause.

XX

The evidence before the Interstate Commerce Commission showed:

(a) That the Florida Commissioners had in writing stated that the rates in Florida which were complained of

were too low and were such as might be deemed confiscatory:

(b) That the rates which the Interstate Commerce Commission had ordered into effect in its order of August 2, 1928, are on substantially the same basis as the present rates under the scale prescribed by the Interstate Commerce Commission from points in South Carolina south of Columbia to Savannah, Georgia, and from South Carolina to destinations in North Carolina, and on logs from points on intervenor's line south of Charleston, South Carolina, to Savannah, Georgia:

(c) That the charges per car of 50,000 pounds on logs from Live Oak, Florida, to Jacksonville, Florida, 128 miles, were $16.00, while from the same point of origin to Waycross, Georgia, 83 miles, the charges on the same logs are $35.00. This illustration is only one of many illustrations covered by the evidence as to the disparity of rates interstate and intrastate:

(d) That the rate intrastate in Florida on logs under the Florida scale known as the Cummer Scale, which was the scale under attack in this case, was not so much as one-half of the rate on the same logs moving over intervenor's line from points in Florida to points in Georgia. To illustrate: The rate on a car of 50,000 pounds from Jasper, Florida, to [fol. 1317] Lake City, Florida, a distance of 69 miles, is $11.50 under the Cummer Scale, and from Jasper, Florida, to Valdosta, Georgia, a distance of 59 miles, the rate is $27.50;

(e) That the rates on logs in cars of 50,000 pounds covering interstate movements from points of origin in Florida to Georgia destinations were higher than the rates then applicable to the same transportation of the same commodity moving in the same circumstances intrastate in Florida over the lines of this intervenor by from 46% to 233%;

(f) That a manufacturer of lumber in Georgia who would draw his logs from Florida points would be at a disadvantage in the eastern markets by about $60.00 per car of lumber as compared with the Florida producer who got his logs in Florida and moved them the same distances under the same circumstances of transportation. The said east-

ern markets were desirable markets to the Florida and Georgia manufacturers.

(g) That a difference of $10.00 to $12.00 per car was a sufficient difference to keep a manufacturer of lumber thus discriminated against out of competition with the favored manufacturers;

(h) That the rates under said Cummer Scale were the lowest rates known to expert rate men for the transportation of logs anywhere in the United States;

(i) That the rates under the said Cummer Scale, that is the Florida intrastate scale complained of in said cause, are only from one-third to one-half of the rates on other commodities having like transportation characteristics, moving in similar circumstances, such as sand, gravel lime, cement and brick;

[fol. 1318] (j) That the rate complained of was very much less than the rate for the same class of transportation on any other line of railroad doing business in Florida;

(k) That there are 64 saw mills along this intervenor's line in Georgia within 170 miles of Florida. and that these mills cannot compete with the Florida producer of lumber in the eastern markets because of the difference in the rates on the inbound logs, which rates were the subject of investigation in said cause;

(l) That the amount of the burden on interstate commerce made by the unduly low rates on said intrastate shipments of logs in Florida under the said Cummer Scale of rates, which were under attack in said cause, would amount to several millions of dollars;

(m) That the volume of the traffic covered by the said logs was such that the discrimination against interstate commerce would continue for many years;

(n) That the difference in the rates under the Cummer Scale and in those under the properly established interstate scale applicable to logs moving over the lines of this intervenor was so great that the necessary commercial effect was to require the movement of logs in Florida to Florida manufacturing points, and to prevent the movement of said

logs to Georgia manufacturing points, although the circumstances of transportation were equally as advantageous to the Georgia manufacturing points:

(o) That the effect of the rates under the Cummer Scale was to undertake to preserve this advantage to intrastate commerce at the expense of interstate commerce;

[fol. 1319] (p) The evidence showed many other kinds of discriminations which were unjust and unduly prejudicial to interstate commerce; and also showed that the discriminations above pointed out were unjust, unduly prejudicial and unlawful.

XXI

Intervenor alleges that the so-called order No. 979 of the Florida Commissioners, which is set out in the supplemental pleadings as Exhibit "A" thereto, was unlawful because it dealt with a subject matter over which the said Commissioners had no jurisdiction, to wit: an order of the Interstate Commerce Commission, and it undertook to amend or annul said order in whole or in part. (The order of the Interstate Commerce Commission referred to being the one dated August 2, 1928.) Also, because it undertook to make an order in conflict with the said order of the Interstate Commerce Commission, and also because it undertook to apply its own construction of the said order, which construction was in conflict with the opinion rendered in this court on the same subject on the 17th day of January, 1929. In all events, the said order of the Florida Commissioners was unnecessary and unlawful.

XXII

The proceedings in the Circuit Court of Duval County, Florida, were unlawful and were null and void for the reason that the said court undertook to deal with a subject matter beyond its jurisdiction, that subject matter being the amendment or the annulling in whole or in part of the said order of the Interstate Commerce Commission. It was further null and void because the said cause had been removed to the proper United States District Court prior to the entry thereof.

[fol. 1320] XXIII

The said order of the Florida Commissioners, No. 979, and the said proceedings by the Florida Commissioners in the Circuit Court of Duval County, Florida, make a direct conflict between the authority of the Federal Government and the acts of those who are undertaking to enforce the powers of the State of Florida. Complainants herein are seeking and will seek to enforce said order.

XXIV

The rates for the intrastate transportation of logs in Florida prescribed as aforesaid by the Interstate Commerce Commission pursuant to lawful authority are the only lawful rates for such intrastate transportation of logs. Intervenor affirms that the said order #979 of the Florida Commission is unlawful and void and that the aforementioned order of the Circuit Court of Duval County, Florida, is also unlawful and void. Any order which this Court may make in this cause sustaining the order of the Interstate Commerce Commission should in order to afford completely effective relief to intervenor, enjoin the said Florida Commissioners and their counsel and employees from enforcing either the said order of the Florida Commissioners or the said order of the Circuit Court of Duval County, Florida.

XXV

Wherefore intervenor prays:

(1) That the prayers of the complainants be denied;

(2) That the Interstate Commerce Commission's order dated August 2, 1928, effective over all of the lines of this intervenor in the State of Florida, without exception, be held to be valid;

(3) That this court do those things and enter such orders [fol. 1321] and decrees as may be necessary or proper to make effective the said order of the Interstate Commerce Commission; and that it issue such restraining orders and injunctions, restraining and enjoining the complainants, who are the Florida Railroad Commissioners, and their at-

torneys and agents, from making or enforcing any order, rule, rate of regulation in conflict with said order of the Interstate Commerce Commission, and also from enforcing any order or decree of the Circuit Court of Duval County, Florida, heretofore entered or which may be entered, undertaking to interfere with the said order of the Interstate Commerce Commission;

(4) That all such orders, interlocutory and/or final, as may be necessary or appropriate to full relief in the premises be entered;

(5) Intervenor prays such other and further relief as may be mete and proper in the premises.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Intervenor.

[fol. 1322] *Duly sworn to by Frank L. Glover. Jurat omitted in printing.*

Rec'd in Clerk's Office March 27, 1929.

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[fols. 1323 & 1324] Orders of Interstate Commerce Commission omitted; printed side page 215 ante.

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[fols. 1325–1328] Opinion on rehearing omitted; printed side page 217 ante.

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[fol. 1329] In United States District Court

[Title omitted]

Final Decree on Rehearing—Filed April 22, 1929

In the above case, on petition of Complainants to open our former decree entered on January 7th, 1929, denying relief and dismissing the original bill, a rehearing was granted and said decree reopened, and thereupon the Atlantic Coast Line Railroad Company, on its petition, was

allowed to intervene in support of the order of the Interstate Commerce Commission of August 2nd, 1928.

The case was submitted for final decree on the reargument and rehearing, to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Samuel H. Sibley, United States District Judge, and Hon. Benjamin C. Dawkins, United States District Judge.

After hearing argument on the same evidence as at the first hearing, and the Court being fully advised:

It is, for the reasons stated in our opinion of March 22nd, 1929 (which opinion is duly filed as a part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and the relief prayed denied.

[fol. 1330] This 17th day of April, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

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[fol. 1331] In United States District Court

[Title omitted]

Petition for Appeal—Filed June 6, 1929

The Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, complainants, feeling themselves aggreived by the final order or decree of the United States District Court for the Northern District of Georgia, dated April 17, 1929, and entered April 22nd, 1929, which denied the relief sought and dismissed the bill and supplemental bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly

authenticated, be sent to the Supreme Court of the United States.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company.

June 6th, 1929.

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[fol. 1332] In United States District Court

[Title omitted]

Assignment of Errors—Filed June 6, 1929

Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, complainants herein, by their respective counsel, now come and in connection with their Petition for Appeal file the following Assignment of Errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court herein, dated April 17, 1929, and entered April 22, 1929.

The District Court erred:

I

In denying the relief prayed, and in dismissing the bill and supplemental bill.

II

In failing and refusing to find that the report and order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, constitute an unlawful exercise of power by said Commission and are without warrant or authority of or under the Constitution of the United States.

III

In failing and refusing to find that there is not and cannot be any interstate commerce in logs over the Atlantic

[fol. 1333] Coast Line Railroad from Florida origins to Georgia destinations on its line.

IV

In failing and refusing to find that the compulsory increase of the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and did not result in the creation of interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

V

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

VI

In failing and refusing to find that there was no issue or controversy under the issues as restricted and defined at the hearing before the Interstate Commerce Commission as to the question that the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

VII

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, not exceeding 170 miles, and in any portion of such State, although there was no case or controversy

[fol. 1334] submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

VIII

In failing and refusing to find that the said order as amended is invalid because of its territorial scope, in that said order as amended fixes the intrastate rates on logs between all points on all the lines of the Atlantic Coast Line Railroad Company in Florida, whereas the intrastate rate investigation in said proceedings before the Interstate Commerce Commission was limited to movements of logs between points on only a portion of the lines of said Atlantic Coast Line Railroad Company located in only a small area situated in Northern Florida.

IX

In failing and refusing to find that there was no evidence whatsoever before the Interstate Commerce Commission supporting or tending to support the conclusion that the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

X

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of Sections 3 or 13 of the interstate commerce act, and without any request or petition by said Atlantic Coast Line Railroad Company by the Georgia [fol. 1335] Public Service Commission, or by any other party to either the Interstate Commerce Commission or to

the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rate.

XI

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that such Florida intrastate log rates are less than reasonably compensatory.

XII

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XIII

In failing and refusing to find that the report and order of the Interstate Commerce Commission constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and is without any warrant or authority of or under the Constitution of the United States, and, further, that said Interstate Commerce Commission was and is without jurisdiction to enter said report and order.

XIV

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of [fol. 1336] the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XV

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State," within the description of Section 13 (3) of said Act.

XVI

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XVII

In holding that the order of the Interstate Commerce Commission of August 2, 1928, as amended on February 7, 1929, was within the issues sought to be investigated by said Commission.

XVIII

In holding that said order of the Interstate Commerce Commission was made after a full hearing by said Commission.

XIX

In holding that the report and order of the Interstate Commerce Commission raising the state rate of the Atlantic Coast Line Railroad Company over its entire system in Florida on logs is justified in order to remove discrimination against general interstate commerce in that said Florida intrastate log rates are so low as to throw an undue burden on the revenues arising from interstate commerce.

[fol. 1337] XX

In the holding that "there was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. * * * The rate was therefore in issue for all the purposes of Section 13, although there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier."

XXI

In holding that "in rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

XXII

In holding that the Interstate Commerce Commission, in reaching its conclusions respecting the Florida intrastate rates on logs, was entitled to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

XXIII

In holding that "on the face of things the log rate is too low, and likely to burden the carrier."

XXIV

In holding that "we cannot say that the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads."

XXV

In holding that the complainants in their reply to the exceptions of said Georgia Public Service Commission to the report of the examiner of the Interstate Commerce Commission failed to contend that the finding of said re-

port with respect to the burdensomeness of said rate was foreign to said investigation.

[fol. 1338] XXVI

In holding that the complainants in their application for a re-hearing before the entire Interstate Commerce Commission failed to contend that the burdensomeness of the Florida intrastate rate was foreign to the investigation had by said Interstate Commerce Commission.

XXVII

In failing to suspend, annul and permanently enjoin the Commission's order of August 2, 1928, as amended from time to time in order to extend the effective date thereof, and as changed in language for the purpose of clarification on February 7, 1928, insofar as said order applied to rates on the intrastate transportation of logs in Florida.

Wherefore complainants and each of them pray that the final order or decree of the District Court dated April 17, 1929, and entered April 22, 1929 be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Commission entered on August 2, 1928 (and changed in language for the purpose of clarification on February 7, 1929) in the proceeding before the Commission cited Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, insofar as said order applied to the rates on the transportation of logs intrastate within the State of Florida over the lines of the Atlantic Coast Line Railroad Company.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors and for Counsel for Complainants.

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[fol. 1339] In United States District Court

[Title omitted]

Order Granting Appeal—Filed June 19, 1929.

The complainants having filed their petition for appeal herein the same is hereby granted and the complainants are hereby allowed to appeal said cause, and

It is ordered that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by said complainants in the sum of five hundred dollars ($500.00) with good and sufficient surety to be approved by this Court conditioned upon the said complainants prosecuting their appeal to effect, and answering all costs if they fail to make their plea good.

This 6th day of June, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

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[fols. 1340 & 1341] Bond on Appeal for $500.00, approved and filed June 13, 1929, omitted in printing.

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[fols. 1342-1352] Præcipe for transcript of record—

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[fols.1353-1357] Citation in usual form showing service on Elmer B. Collins et al., omitted in printing.

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[fol. 1358] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 1359] [Caption omitted]

[fol. 1360] In United States District Court, Northern District of Georgia, Atlanta Division

In Equity. No. 512

Wilson Lumber Company of Fla,, Plaintiff,

vs.

United States of America, Defendant

Bill of Complaint—Filed Nov. 26, 1928

To the Honorable District Court of the United States for the Northern District of Georgia, Atlanta Division:

Plaintiff herein, Wilson Lumber Company of Fla., respectfully represents:

That it is a corporation organized under the laws of the State of Florida and engaged in the business of manufacturing lumber at its mills located at Ferry, Fla., in the State of Florida, on the line of the Atlantic Coast Line Railroad Company, about seventy miles south of the Florida-Georgia boundary line.

I

Plaintiff brings this suit in equity against the United States of America under an Act of Congress approved October 22, 1913, known as the District Court Jurisdiction Act, 38 Stat. L. 319, to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission, hereinafter called the Commission, on the 2d day of August, 1928, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, instituted by the Georgia Public Service Commission before the Commission.

[fol. 1361]

II

The said order of the Commission of August 2d, 1928, was entered by the Commission upon complaint of the Georgia Public Service Commission, a public tribunal of the State of Georgia, created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

In its complaint filed with the Commission on May 3, 1926, the Georgia Public Service Commission alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia, were unjust and unreasonable and, as compared with rates on logs within the State of Florida, were unjustly discriminatory and unduly prejudical, causing undue and unreasonable advantage, preference and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce.

IV

Thereafter the Commission held hearings on the issues raised and at such hearings the Atlantic Coast Line Railroad Company, while denying that the interstate rates maintained by it from points in Florida to points in Georgia were unreasonable or otherwise unlawful, proposed to established in lieu of the existing rates a certain scale of rates but said Atlantic Coast Line Railroad Company continued to deny that its rates within the State of Florida were in violation of any provision of the Interstate Commerce Act or were otherwise unlawful. After said hearings by an examiner of the Commission, the parties of record before the [fol. 1362] Commission filed their briefs and thereafter, on the 15th day of August, 1929, R. M. Brown, the examiner of the Commission who had presided at such hearings, filed his report and recommendations with the Commission, in which report he recommended the establishment of the rates proposed by the Atlantic Coast Line Railroad Company for application from points in northern Florida to points in Georgia, but recommended that no change be ordered in the Florida intrastate rates and that the complaint be dismissed insofar as it alleged discrimination between shippers in interstate commerce and shippers in Florida intrastate commerce, or discrimination against interstate commerce.

V

Thereafter exceptions were filed to the said report of the examiner of the Commission by the Georgia Public Service Commission and certain intervening railroads, to which replies were filed by the Florida Railroad Commission and other Florida interests. Thereafter, on the 16th day of December, 1927, the case was orally argued before Division 4 of the Interstate Commerce Commission.

On the 2d day of August, 1928, said Division 4 of the Commission handed down its opinion and entered its order. In its said opinion it found that the rates within the northern part of Florida unduly discriminated against shippers in interstate commerce from Florida to Georgia and unduly preferred shippers in intrastate commerce within the northern section of Florida.

The Commission further found that the existing rates from points in northern Florida to points in Georgia, for distances up to 170 miles, were unjust and unreasonable and prescribed in lieu of such rates the scale of rates proposed by the Atlantic Coast Line Railroad Company. The order of the Commission as to the rates from northern Florida to points in Georgia has been complied with and is not involved in this proceeding.

[fol. 1363] The Commission further found that the existing rates on logs in the northern part of Florida unduly discriminated against interstate commerce and ordered all of the log rates in the State of Florida over the lines of the Atlantic Coast Line Railroad Company to be increased so that they "shall be the same as those prescribed (in the next preceding paragraph hereto) as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia". A certified copy of the opinion and order of the Commission is filed herewith, as part hereof.

VI

The order of the Commission entered as aforesaid, was, by its terms, effective on or before the 10th of October, but by a subsequent order the effective date of so much of said order as required an increase in the log rates between points in the State of Florida, was extended to November 10, 1928, and by further order was extended to December 10, 1928. Numerous parties, including this plaintiff, filed petitions for a reopening of said case as to rates between points in Florida and for further argument and consideration, and filed briefs in support of said petitions, but the Commission, by an order entered on the 1st day of November, 1928, overruled and denied all of said petitions.

VII

Plaintiff further avers and charges that the said order of the Commission requiring an increase in the rates on logs between points in Florida, entered on the 2d day of August, 1928, the effective date of which has been postponed to the 10th day of December, 1928, is null and void and of no effect because same is in excess of the powers conferred upon the

Commission by law and is not supported by substantial evidence.

[fol. 1364] VIII

In its opinion, heretofore referred to, the Commission made the following finding:

"While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

Altho the Commission confined its consideration and its findings to the above described restricted portion of Florida and its order as to interstate rates is confined to points in said restricted portion of Florida, yet the Commission by its order required the Atlantic Coast Line Railroad Company to increase its rates on logs as between all points on its line within the entire state of Florida.

IX

This plaintiff has a vital interest in the rates maintained by the Atlantic Coast Line Railroad Company, on logs from points in Florida to its mill at Perry, Florida, and all of said rates are required by the order of the Commission to be increased altho many of said rates apply from points south of Perry, Florida, which are not within the territory considered by the Commission, and from which the interstate rates to Georgia were prescribed and are not near the border, both Perry and said points south thereof being interior points.

X

The Commission found that the intrastate rates between points in the portion of northern Florida described by it, [fol. 1365] as above set forth, unduly discriminated against shippers in interstate commerce from such points to points

in Georgia but by its order required the Atlantic Coast Line Railroad Company, to increase all of its rates in Florida, whether within or without the restricted territory referred to, and altho applying between points within the interior of Florida, none of which are near the border between Florida and Georgia, and that in so doing the Commission undertook to regulate purely intrastate commerce and exceeded the powers vested in it by law and its order is therefore null and void and of no effect.

XI

Plaintiff further says that the finding of the Commission that the rates applying intrastate within the northern portion of Florida, above referred to, unduly discriminate against shippers in interstate commerce, was made without any substantial evidence to support same in that all of the evidence established that there was not and could not be any movement of logs from said northern portion of Florida to points in Georgia, nor was there any evidence to establish that if there should be any such movement it would be under substantially similar circumstances and conditions as the movement between points in Florida, and that said finding of the Commission is therefore arbitrary and is null and void.

XII

Plaintiff says that the Commission, after finding that any intrastate rates in Florida lower than the rates prescribed by it for application between points in northern Florida and points in Georgia "result, and will result, in undue preference and advantage to shippers of intrastate traffic within the State of Florida and undue prejudice to ship-
[fol. 1366] pers of interstate commerce from points in the State of Florida to points in the State of Georgia", further found that such intrastate rates in Florida would result "in unjust discrimination against interstate commerce."

XIII

Plaintiff says that in finding that the rates on the lines of the Atlantic Coast Line Railroad Company in the State

of Florida would result in unjust discrimination against interstate commerce, the Commission went beyond the issues presented to it by the parties, in that there was no contention on the part of the Georgia Public Service Commission or any intervenor that the rates within Florida cast a burden on interstate commerce or discriminated against interstate commerce as a whole, because, on the contrary, the Georgia Public Service Commission contended that the rates applicable within the State of Florida were just and reasonable rates and should be applied to interstate transportation.

XIV

Plaintiff says that there was no substantial evidence to support the finding that the intrastate rates in Florida were such as to cast a burden upon or discriminate against interstate commerce, as a whole, and that such finding of the Commission was made without any substantial evidence to support same and the order of the Commission based on such finding is arbitrarily made and is null and void and of no effect.

XV

Plaintiff further avers and charges that by its order requiring the Atlantic Coast Line Railroad Company to increase its rates on logs within the State of Florida, the Commission undertook to substitute its judgement as to [fol. 1367] what rates shall be charged for that of the carrier and deprived the plaintiff of the right to have the benefit of the exercise of the managerial judgement in fixing rates of the carrier serving it, all of which is beyond the power of the Interstate Commerce Commission, and therefore null and void.

XVI

Plaintiff further says that the rates on logs within the State of Florida over the lines of the Atlantic Coast Line Railroad Company have never been fixed by any state authority but are rates voluntarily established and maintained by the Atlantic Coast Line Railroad Company, and that the Interstate Commerce Commission is without power

to order such rates increased in the absence of some action by the Florida Public Service Commission or other authority in the State of Florida.

XVII

Plaintiff further avers and charges that it has invested more than $200,000 in its mills at Perry, Fla., and has arranged for the manufacture into lumber of large quantities of logs at its said mill, all of which logs will have to be transported by the Atlantic Coast Line Railroad Company; that the effect of the order of the Interstate Commerce Commission is to require that the rates upon which such logs will be transported to its said mill, be more than doubled and that it will be impossible for plaintiff to pay such rates and operate its mill except at heavy loss and that its ability to operate such mill and to continue its business will be seriously impaired, and that unless the enforcement of said order is by this Honorable Court enjoined, it [fol. 1368] will be irreparably injured and damaged in its business and will be deprived of its property by the enforcement of an unlawful order of the Interstate Commerce Commission.

XVIII

The premises considered and because plaintiff has no adequate remedy at law, plaintiff prays, therefore, that this Bill of Complaint be received and filed, that a writ of subpoena be issued by the Clerk of the Court, as provided by law, commanding the United States of America to appear and defend this action, that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission, and that upon the filing of this Bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge, and that upon five days' notice of the time and place of hearing having been given to the Attorney General and the Interstate Commerce Commission, the plaintiffs be granted a temporary injunction restraining the Interstate Commerce Commission and the United States of America from enforcing the terms of said order requiring the Atlantic Coast Line Railroad Company to increase its rates on logs

between points in the State of Florida, and restraining said Atlantic Coast Line Railroad Company from complying with the aforesaid order requiring it to increase said rates; and that upon final hearing of this case a decree be entered adjudging the said order to be in all respects null and void and ordering the same to abrogated, cancelled and set aside, and permanently enjoining the Interstate Commerce Commission and the United States of America from taking any steps to enforce the said order; and that, in view of the fact that said order requires the Atlantic Coast Line Railroad Company, to increase said rates on or [fol. 1369] before the 10th day of December, 1928, pending the consideration of this application for a temporary injunction, a restraining order be entered to the same effect as the temporary injunction prayed for, and that plaintiffs be given such other further and general relief, as in equity and good conscience may seem meet.

J. V. Norman, Norman, Quirk and Graham, Attorneys for Plaintiff.

Duly sworn to by Alfred G. Wilson. Jurat omitted in printing. (All in italics)

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[fols. 1370-1382] Exhibit; printed side page 19 ante.

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[fol. 1383] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INTERLOCUTORY INJUNCTION OR SUSPENSION

To the Interstate Commerce Commission, the Attorney General of the United States:

Now comes the plaintiff, Wilson Lumber Company, of Fla., and moves the court to grant a temporary or interlocutory injunction, or a temporary stay or suspension upon the Bill filed herein enjoining or restraining the Interstate Commerce Commission and the United States of America from enforcing the terms of the order specifically set forth

in said Bill and entered by the Interstate Commerce Commission on the 2nd day of August, 1928, and the plaintiff respectfully represents that irreparable damage will otherwise ensue in this, to-wit:

That the order heretofore entered by the Interstate Commerce Commission, as set forth in the Bill herein filed, is null and void and of no effect; that if said order of the Interstate Commerce Commission is enforced, plaintiff will be greatly injured and damaged in its business and will be deprived of its property by an unlawful order of the Interstate Commerce Commission; that plaintiff in the premises has no adequate remedy at law; all of which facts and circumstances are more particularly set forth in the Bill herein filed.

That in support of this motion, plaintiff relies upon the record of the proceedings hereinbefore had and testimony taken therein before the Interstate Commerce Commission in Docket 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, a copy of which will [fol. 1384] be filed in this proceeding, and upon the allegation of the Bill filed herein, which Bill is sworn to and is to be treated as an affidavit in support of this allegation, and also upon additional affidavits which will be submitted in support of said application at a hearing thereon.

Plaintiff further moves that the court call to his assistance to hear and determine this application two other judges, of whom at least one shall be a Circuit Judge, as provided by the District Court Jurisdiction Act, so called.

J. V. Norman, Norman, Quirk & Graham, Attorneys for Plaintiff.

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[fol. 1385] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR INJUNCTION—Filed Nov. 28, 1928

To the Interstate Commerce Commission, the Attorney General of the United States:

You will hereby take notice that the plaintiff herein will present to the District Judge of the District Court of the United States for the Northern District of Georgia, At-

lanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the Interstate Commerce Commission and the United States of America from enforcing a certain order entered by the Interstate Commerce Commission on the 2d day of August, 1928, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and in the written Motion, copy of which is also attached hereto, and that said application will be for hearing at Atlanta, Georgia, at 10 o' clock a. m., on the 3d day of December, 1928, or as soon thereafter the Court may hear the same.

Dated this 26 day of November, 1928.

Norman, Quirk and Graham, Attorneys for Plaintiff.

Service, by copy, of the within application and notice is hereby acknowledged this 26 day of November, 1928.

William J. Donovan, the Assistant to the Attorney General, for the Attorney General of the United States. Daniel W. Knowlton, Chief Counsel Interstate Commerce Commission.

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[fol. 1386] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Dec. 24, 1928

United States for answer to the bill of complaint filed herein against it says:

I

United States admits the allegations and conclusions of paragraphs I to VI, inclusive, of the bill of complaint.

II

United States denies the allegations and conclusions of paragraph VII of the bill of complaint.

III

United States admits paragraph VIII of the bill of complaint, except that it denies the allegation that "the Commission confined its consideration and its findings to the above described restricted portion of Florida."

Further answering said paragraph VIII, United States alleges that, as alleged in paragraph III of the Bill of complaint and hereinbefore admitted, the pleadings filed with and before the Interstate Commerce Commission raised the issue whether intrastate rates on logs "within the State of Florida," were unjustly discriminatory and unduly prejudicial as against Georgia shippers in intrerstate commerce, and unjustly discriminatory against interstate commerce.

[fol. 1387] IV

United States denies paragraphs IX and X of the bill of complaint, with this exception: it has no knowledge or belief concerning plaintiff's alleged interest in the rates maintained by the Atlantic Coast Line Railroad Company on logs from points in Florida to Perry, Florida.

Further answering said paragraphs, United States says that the Commission, in making its said report and findings therein, considered all rates assailed by the complaint filed with it, which alleged, among other things, that rates on logs applicable intrastate within Florida were unjustly discriminatory and unduly prejudic-al, and that the Atlantic Coast Line Railroad Company's Florida intrastate rates were unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce.

V

United States denies paragraphs XI, XII, XII, XIV, XV and XVI of the bill of complaint, and for a further answer to said paragraph XII, alleges that the Commission's finding therein quoted in part only, is on page 724 of said report, filed with and made a part of the bill of complaint, and reads as follows:

*

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

VI

For answer to paragraph XVII of the bill of complaint, United States specifically denies that that unless the enforcement of said order is enjoined plaintiff will be irreparably injured and damaged in its business and deprived of its property; and further answering said paragrap*g* XVII, United States says that the matters and things therein alleged are irrelevant and immaterial, and are mere surplusage.

VII

Except as herein expressly admitted, United States [fol. 1388] denies the truth of each and every allegation and conclusion contained in the bill of complaint in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 1389] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 1390] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AS DEFENDANT BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes Georgia Public Service Commission and respectfully represents that it was the complainant before the Interstate Commerce Commission in the proceeding which resulted in the report and order which is the subject matter of the litigation in this cause.

Your petitioner desires to appear and be made a party defendant in the said cause and to be represented before this Court in the disposition thereof.

This petition is made in accordance with Section 213 of the Federal Judicial Code.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman. Jas. A. Perry, Att'y for Georgia Public Service Commission.

The foregoing petition of Georgia Public Service Commission is granted, this 29th day of December, 1928.

Sam'l H. Sibley, Judge United States District Court, Northern District of Georgia.

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[fol. 1391] IN UNITED STATES DISTRICT COURT

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

Georgia Public Service Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto and to so much or such part thereof as it is advised that it is material for it to answer, says:

I

Intervenor admits the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the bill.

VII

Intervenor denies the allegations of paragraph 7 of the bill.

VIII

The eighth paragraph of the bill undertakes to state and construe a part of the report and order of the Commission. These speak for themselves. The order is no broader than is necessary to prevent the Florida scale of rates called the "Cummer Scale" from unduly, unreasonably and unlawfully prejudicing interstate commerce.

IX

Intervenor admits that the complainant has an interest in the rates on logs in Florida, but denies that it has any property interest therein. It has an interest in the rate structure such as other shippers have, no more and no less. And intervenor denies that the Commission considered the rate structure in only a part of the State of Florida. The Commission considered the rate structure in the entire State and the report so shows.

X

Intervenor denies the allegations contained in paragraph 10 of the bill. The Commission found that the Cummer [fol. 1392] scale of rates unnecessarily burdens interstate commerce and unnecessarily works an unjust and unreasonable discrimination against the manufacturers of lumber who competed with the Florida manufacturers in interstate commerce.

XI

Intervenor denies the allegations of paragraph 11 of the bill.

XII

The allegations of paragraph 12 are admitted.

XIII

The allegations of paragraph 13 are denied.

XIV

The allegations of paragraph 14 are denied.

XV

The allegations of paragraph 15 are denied.

XVI

The allegations of paragraph 16 are denied.

XVII

Intervenor has not sufficient information to answer as to the investment of the complainant in mills at Perry, Florida, and as to the other matters and things alleged in said paragraph intervenor avers that the complainant has no right to a rate which is so unreasonably low as to be an unjust and unreasonable burden upon the Interstate Commerce Commission and to work an unjust and unreasonable burden upon the Interstate Commerce Commission and to work an unjust and unreasonable discrimination against shippers in interstate commerce. Intervenor denies that the complainant will be irreparably injured and damaged or that it will be deprived of its property by the enforcement of the order of the Commission.

Further answering the said bill, intervenor avers:

(1) That under the so-called Cummer scale of rates, that is the Florida intrastate log scale for not exceeding one hundred and seventy (170) miles, the Florida producer of [fol. 1393] lumber is given a great advantage over his competitor in the State of Georgia. To illustrate: for one hundred and seventy miles, the maximum distance of the Cummer scale, the Florida rate on a car of 50,000 pounds, is $18.50, and the interstate rate for the corresponding distance is $47.50. The Florida scale is less than one-half of the scale applicable in interstate commerce. The State of Florida, because of the nature of its traffic conditions, generally has higher rates than those which apply on the same commodities for similar distances in other States of the Southeast. The log rates prescribed by the Cummer scale

are the lowest in the Southeastern territory, and intervenor avers that it would be wholly impracticable for a Georgia producer of lumber to buy logs in Florida and have them carried to his mill in Georgia, for to do that would put a charge on the carriage, of about two and a half times as much as the charge would have been if the logs had moved a like distance under similar circumstances in the other direction to a Florida destination. The inevitable result of this is to prevent movements of logs from Florida into Georgia.

(2) Intervenor avers that the lumber which is manufactured in Georgia out of logs brought from Florida points of origin must bear a tariff or a tax or a charge or a burden commensurate with the aforementioned difference in the transportation of the logs out of which the lumber is manufactured; that this handicap on the Georgia industry is reflected by the large plants which are located in Florida as compared with those located in Georgia.

(3) Intervenor avers that the intrastate rates in Florida under the Cummer scale are so unreasonably low that they cannot be provided as rates on intrastate commerce in Georgia and in the event the Georgia producer hauls logs for a like distance from a point of origin in Georgia to his mill in Georgia, the same kind of burden will be placed upon the Georgia producer as if the logs had originated in Florida. So that when the Georgia lumber meets the Florida lumber in interstate competition, the Georgia manufacturer [fol. 1394] is placed at an unreasonable disadvantage in all circumstances.

(4) Intervenor avers that there is ample evidence to support all of the findings of the Commission; that this evidence consisted of oral testimony and of exhibits and statistics, all of which were introduced in a closely contested proceeding which consumed a number of days at each of the two hearings, and then another day in the oral argument before the Commission, besides the filing of briefs and the other motions for reconsideration and reargument, which are referred to in the bill.

(5) There was evidence to support the fact that there was standing timber available for purchase to be used for shipment out of the State of Florida and into the State of

Georgia. There was evidence to support the suggestion that pending this controversy, standing timber had been purchased by the Florida interests, which timber was then under negotiation by Georgia interests, and that this timber was to have been used to manufacture lumber in Georgia. Intervenor avers that it would be natural that the Florida lumber manufacturer should outbid the Georgia manufacturer for standing timber in Florida, because the Florida producer has the advantage of the Cummer scale, while the Georgia producer would be at the disadvantage of the interstate scale, to the extent hereinbefore indicated and more fully laid before the Commission.

(6) Intervenor avers that, if it be true that the complainants in this case and their associated companies who intervened in the cause before the Interstate Commerce Commission have acquired their monopolistic holdings in the standing timber in Florida indicated by the allegations of the bill and to such extent that there is now no more standing timber available for sale—that has been made possible by the existence of the Cummer scale and is one of the patent ills worked by the Cummer scale against interstate commerce.

(7) Furthermore, intervenor avers that if the scales of rates were upon equality, the self interest of the present [fol. 1395] holders of the standing timber in Florida, including the self interest of the complainants themselves, would dictate the sale of that timber to the mills in Georgia, which are nearer to that timber than are the mills in Florida.

(8) Intervenor avers that the mills in Florida having acquired large holdings of timber in circumstances which enable them through the Cummer scale to outbid competitors in the State of Georgia, seek to continue to hold an unjust and unreasonable advantage acquired through the misuse of transportation rates—all of which is prejudicial to interstate commerce and to the manufacturers of lumber in Georgia, and contrary to the statutes in such cases made and provided.

(9) (a) Intervenor avers that in 1921 it, in the discharge of its duties as a public service commission of Georgia,

undertook a revision of the Georgia intrastate rates of rail carriers.

The carriers submitted a scale of rates on forest products to be applied without transit and a scale of net rates to be applied on logs and other products under transit arrangements. At the time this was done the Georgia carriers announced their purpose to seek authority to adopt the scale thus submitted for uniform interstate application throughout their several systems to seek the authority of the various state commissions to make effective the same scale on intrastate traffic in other states as well as the State of Georgia.

The Georgia Commission did not approve the rates submitted, but after extensive hearings it issued, on April 25, 1925, an order to become effective June 1, 1925, prescribing certain rates on logs. Those rates, while lower than the scales submitted by the carriers, were somewhat higher than the existing rates in Georgia.

On May 29, 1925 the Georgia Commission suspended the rates prescribed on April 15, 1925 and a further hearing was held. At this rehearing the evidence was directed largely to the matter of discrimination in respect to which the Georgia Commission stated to the Georgia carriers as follows:

[fol. 1396] "The evidence submitted at the rehearing reveals what is, in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order" (Transcript, p. 210).

(b) To illustrate some of the unusual features of the Florida intrastate log rate which is complained of; that scale being at 1.71¢ per 100 pounds for a movement of 5 miles and the same rate continues through the 45 mile distance while the corresponding interstate rate begins at 2.5¢ for the 5 miles distance is graduated, being at 4¢ for 25 miles and 4.5¢ for 45 miles; at 170 miles the Florida rate is 3.70¢ per 100 pounds and the corresponding interstate rate is 9.5¢ per 100 pounds; 170 miles being the maximum distance to which this scale is applicable; the rate for 180 miles

becomes 8.33¢ per 100 pounds as compared with 3.7¢ per 100 pounds for 170 miles; the Florida intrastate rate on logs is very much less than its intrastate rate on short logs; the rate on short logs begins at 2.13¢ for 5 miles while on logs it begins at 1.71¢ and at 170 miles the rate on short logs is 6.25¢ and on logs it is 3.71¢.

(c) The Florida scale which is complained of, when compared with other like commodities which usually take the same rates, show the same disparity; for instance, the rate on brick begins at 3¢ for the distance of 5 miles, while the rate on logs is 1.71¢ for the same distance and at 170 miles the rate on brick is 10¢ per 100 pounds while the rate on logs is 3.70. Even greater disparities are shown in the matters of lime, sand and cement.

Reference is made to exhibits 11, 18, 19, and 20 of the record before the Commission and to the testimony of the witness Perrin beginning at page 210 of the transcript.

(d) If the Florida intrastate scale on logs should be adopted for interstate application, the present revenue of $27.50 for a haul of 50 miles would be reduced to $11.55. This would represent less than one-half of the present interstate revenue and it would mean that the revenue per car on logs for this haul would be about one-third of the revenue on a similar haul or brick and considerably less than [fol. 1397] one-third of the revenue on sand, gravel or lime and less than one-fifth of the present revenue on cement.

(e) If the present intrastate log scale in Florida should be adopted for interstate application between Florida and Georgia, the per car revenue on logs under the present interstate scale would be reduced for a haul of 100 miles from $38,50 to $14.30. This figure is less than one-third of the revenue derived for a similar movement of brick intrastate in Georgia, or on gravel, sand and lime, and about ¼ of the revenue derived on a similar movement of cement.

(10) This intervenor avers that the contract between the Atlantic Coast Line Railroad Company and the Carpenter-O'Brien Company—which was filed an Exhibit #13 in the proceeding before the Commission contains the following clause:

"It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pur-

suant and subject to all of the laws of the United States and of the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement."

Your intervenor avers that any change which is worked in the rates mentioned in the contract by the order of the Interstate Commerce Commission was anticipated by the parties themselves and such changes is within the contemplation of the contract.

Your intervenor avers that under the terms of the contract with the Carpenter-O'Brien Company referred to above, the rates known as the Cummer scale were to be applicable until one billion (1,000,000,000) feet of timber has been cut. This, of itself, was an improper basis of rate making, and, this intervenor believes the one billion feet has been either entirely cut or very nearly so.

Wherefore this intervenor prays that the bill be dismissed and the prayers of the complainants be denied.

Georgia Public Service Commission, per Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

[fol. 1398] *Duly sworn to by Jas. A. Perry. Jurat omitted in printing.*

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[fol. 1399] IN UNITED STATES DISTRICT COURT

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

To the Honorable the Judge of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, J. Stanley Payne.

[fol. 1400] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I, II and III of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs IV to XVIII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated August 2, 1928, referred to in paragraph V, a copy of which is attached to and made a part of the bill of complaint; that said report and order were made and entered in a proceeding before the Commis-[fol. 1401] sion, entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, docket No. 18364, and said report is published at 146 I. C. C. 717-725; that the Commission refers the court to the text of said report and order for full, complete and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based; that the plaintiff herein was not made a party to said proceeding either by its own intervention or otherwise and did not take part or appear therein, but after said report and order of August 2, 1928, were made and entered the plaintiff herein by petition dated September 25, 1928, petitioned the Commission for leave to intervene and for reconsideration and

reargument, which petition the Commission denied by order dated November 1, 1928; that at hearings in said proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of August 2, 1928; that said report and order included the Commission's findings of fact, decisions, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions on said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully in the light of its [fol. 1402] own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of August 2 was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and that the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering paragraphs VII to XVIII, inclusive, of the bill of complaint, the Commission denies that said order of August 2 is either unlawful or void for the reasons, or for any of the reasons, set forth in said paragraphs. The

Commission particularly denies that the plaintiff will suffer either irreparable damage or irreparable injury, as stated in paragraph XVII of the bill of complaint, unless said order of August 2 is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each and of all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of August 2, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, of Counsel.

[fol. 1403] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[File endorsement omitted.]

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[fol. 1404] In United States District Court

[Title omitted]

Order Consolidating Causes—Jan. 3, 1929

On motion of Charles E. Cotterill, of counsel for the plaintiffs herein,

It is ordered that the above numbered and entitled causes be, and the same are hereby consolidated for the purpose of trial.

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[fol. 1405] Minute entries of argument and submission omitted in printing.

[fol. 1406] Item No. 9 of the Præcipe

(Omitted from this transcript.)

NOTE.—Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511 and 512, and so received (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court).

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[fols. 1407-1415] Opinion omitted; printed side page 56 ante.

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[fol. 1416] IN UNITED STATES DISTRICT COURT

In Equity. No. 5121

THE WILSON LUMBER COMPANY, Complainant,

vs.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

DECREE—Filed Jan. 17, 1929

This case was submitted for final decree to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Benjamin C. Dawkins, United States District Judge, and Hon. Samuel H. Sibley, United States District Judge. After hearing evidence and argument, and the Court being fully advised, it is, for the reasons stated in an opinion this date filed, considered and decreed that the relief prayed by the complainant be denied and the bill be dismissed.

This 17 day of January, 1929.

R. W. Walker, United States Circuit Judge. Ben. C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1417] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REHEARING—Filed Feb. 21, 1929

To the Honorable Judge of the Distrcit Court in and for the Northern District of Georgia, Atlanta Division, in Chancery Sitting:

Now comes Wilson Lumber Company of Florida, by its undersigned Solicitor of Record, and files and presents this its Petition for Rehearing in the above entitled cause, and as grounds therefor asserts the following:

1. That on the 17th day of January, A. D. 1929, this Court made and entered its decision, opinion and decree in this cause wherein that certain Order of the Interstate Commerce Commission, dated August 2nd, 1928, entered in Docket #18364 entitled Georgia Public Service Commission versus Atlantic Coast Line Railroad Company (146 I. C. C. 717) was construed and limited in its Intrastate application for the transportation of logs, to northbound movements, in one direction only, from points of origin north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, for distances not exceeding 170 miles, all of which appears of record in this cause and reference thereto is hereby specifically prayed.

2. That thereafter on the 7th day of February, A. D. 1929, said Interstate Commerce Commission entered an Order purporting to be an Amendment to its order of August 2, 1928, wherein and whereby it declared and decreed that its order of August 2, 1928, insofar as the same pertained to intrastate rates, was applicable "within and throughout the entire State of Florida without exception."

A true copy of said order of February 7, A. D. 1929, is [fol. 1418] attached hereto as Exhibit "A", and made a part thereof.

3. That said order of August 2, 1928, as amended by said order of February 7, 1929, is null and void and of no force and effect for the several reasons contained in your petitioner's bill of complaint heretofore filed in this cause, to which reference is hereby prayed as if the same were specifically set forth herein; and said Order of August 2,

1928, as so amended by said order of February 7, 1929, ought to be wholly enjoyed, set aside, annulled and suspended.

4. Your Petitioner herewith tenders and presents its supplementary bill in the nature of a bill of review wherein your petitioner upon re-hearing seeks to restrain, enjoin, set aside, declare null and void and of no effect said order of the Interstate Commerce Commission of August 2, 1928, as amended by its order of February 7, 1929.

Wherefore your petitioner prays as follows:

(a) That this Court entertain this Petition for re-hearing.

(b) That the Final Decree of this Court entered January 17, 1929, be opened, vacated and set aside, and that a re-hearing be granted to your Petitioner herein.

(c) That your Petitioner be permitted and allowed to file herein its supplemental bill in the nature of a bill of review which herewith is tendered and presented, to properly bring before this court the new facts, matters and things herein specifically set forth all of which are material and not cumulative; and all of which occurred after the rendition of this Court's decree on January 17, 1929; and had such facts, matters and things existed prior to January 17, 1929, a decree would have been entered in favor of your Petitioner.

(d) That the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, be ordered and required on a day certain to show cause why the prayers in this petition should not be granted.

(e) That your Petitioner may have such other and further relief as to this Court may seem proper and the nature of the case may require.

And your Petitioner will ever pray, etc.

Norman, Quirk & Graham, Solicitors for Petitioner.

[fol. 1419] *Duly sworn to by George L. Rutherford. Jurat omitted in printing.*

[fol. 1420] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in Chancery sitting:

Wilson Lumber Company of Florida, a corporation by its undersigned Solicitors of Record, brings this, its Supplemental Bill of Complaint in the nature of a bill of review against the United States of America and Interstate Commerce Commission and thereupon your Orator complaining, says:

I

That heretofore, to-wit: on the — day of November, A. D. 1928, your Orator filed in this cause its Bill of Complaint against the defendants herein, wherein your Orator sought to annul, set aside and enjoin that part of an order of the Interstate Commerce Commission entered by it on the 2nd day of August, A. D. 1928, in Docket #18364 entitled "Georgia Public Service Commission vs. Atlantic Coast Line Railroad" (146 I. C. C. 717), whereby said Interstate Commerce Commission attempted to require Atlantic Coast Line Railroad to increase its Florida Intrastate Rates for the transportation of logs from and to all points in Florida.

That answers were filed by the defendants to said Bill, and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your Orator filed its aforementioned Bill of Complaint, two other Bills of Complaint were filed against the Defendant herein; one by the State [fol. 1421] of Florida and the other by the Brooks-Scanlon Corporation, the Wilson Cypress Company and the Cummer Cypress Company. In each of the two last mentioned Bills of Complaint, the relief prayed for a substantially similar to that prayed for in and by your Orator's Bill. That upon your Orator's Bill, and said two other bills of Complaint coming on to be heard, the same were consoli-

dated for the purpose of final hearing; and after due and regular notice, final hearing was had at New Orleans, Louisiana, before Judges Sibley, Walker and Dawkins, testimony was taken and said cases submitted. That thereafter, on the 17th day of January, A. D. 1929, an opinion was handed down in said cases so consolidated and orders of dismissal by specific reference made the opinion of this Court a part thereof.

The aforesaid proceedings above enumerated all appear of record in this Court, and reference thereto is hereby specifically prayed.

II

That in and by its opinion, this Court, to hold said Order of August 2, 1928, valid, construed the same insofar as it was applicable to intrastate rates in Florida, as being limited to the territory specifically referred to by the Interstate Commerce Commission in "Said Order," fixing interstate rates from points in Florida to destinations in Georgia, such construction and limitation being confined to transportation north bound on the lines of the Atlantic Coast Line Railroad Company in Florida from points of origin north of and including Burnett's Lake, Florida, situate upon the line of said defendant, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to and beyond DuPont, Georgia, and likewise from points of origin North of and including Gainesville, Florida, upon the line of the defendant which extends through Burnett's Lake, Florida, and through Jacksonville, Florida, to and beyond Folkston, Georgia. And thereupon and thereby said order with such construction and limitations was upheld and your Orator's Bill dismissed.

III

That two (2) Supplemental Bills in the nature of Bills of Review are likewise being filed simultaneously by the State of Florida and by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company. That certain exhibits will be referred to and mentioned in each of said supplemental bills and likewise in this Bill.

[fol. 1422] That only one set of exhibits will be filed in support of said three (3) Supplemental Bills, in order to avoid encumbering the record of said suits.

IV

That thereafter on the 7th day of February, A. D. 1929, said Interstate Commerce Commission entered an order purporting to be an amendment of its order of August 2, 1928, wherein and whereby it declared and decreed that its order of August 2, 1928, insofar as the same pertained to intrastate rates, was applicable "within and throughout the entire State of Florida without exception." a true copy of said amendatory order of February 7, 1929, is herewith tendered as Exhibit "D" and made a part hereof as if specifically set forth herein.

V

That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court prior to said amendment of February 7, 1929; and said order, as amended as aforesaid, constitutes an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Atlantic Coast Line Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

VI

That your Orator brings this supplemental bill to set forth the new facts, matters and things that have occurred and taken place since this Court's decision, opinion and decree of January 17, 1929, and to enjoin, set aside, annul and suspend report and "Said Order" of the Interstate Commerce Commission of August 2, 1928, as amended by the order of February 7, 1929, insofar as such report and order as amended required or attempts to require the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs,

except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic "within and throughout the entire State of Florida, without exception", which shall be the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation over said Atlantic Coast Line Railroad Company's lines, from points of origin in the State of Florida north of and in-
[fol. 1423] cluding Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on said Company's lines in the State of Georgia.

That report of said Interstate Commerce Commission and said Order of August 2, 1928, as amended as aforesaid with respect to the Florida Intrastate Rates on logs was and is arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful for the reasons following; among others, to-wit:

(a) That said report and said order as amended is null and void and of no effect, because the same is in excess of the powers conferred upon said Interstate Commerce Commission by law, and the same is not supported by substantial evidence.

(b) That in its report, heretofore referred to, said Interstate Commerce Commission made the following finding:

"While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

Although said Commission confined its consideration and its findings to the above described restricted portion of Florida and its order as to interstate rates is confined to points in said restricted portion of Florida, yet the Commission by its order as amended required the Atlantic Coast Line Railroad Company to increase its rates on lots as between all points on its line within and thruout the entire state of Florida, without exception.

(c) Your Orator has a vital interest in the rates maintained by the Atlantic Coast Line Railroad Company, on logs from points in Florida to its mill at Perry, Florida, and all of said rates are required by said order as amended to be increased, altho many of said rates apply from points south of Perry, Florida, which are not within the territory considered by the Commission, and from which the interstate rates to Georgia were prescribed.

(d) That said Commission found that the intrastate rates between points in the portion of Northern Florida described by it, as above set forth, unduly discriminated against shippers in interstate commerce from such points to points in Georgia but by its order as amended required [fol. 1424] the Atlantic Coast Line Railroad Company to increase all of its rates in Florida, whether within or without the restricted territory referred to, and altho applying between points within the interior of Florida, none of which are near the border between Florida and Georgia, and that in so doing the Commission undertook to regulate purely intrastate commerce and exceeded the powers vested in it by law and its order is therefore null and void and of no effect.

(e) That said finding of the Commission that the rates applying intrastate within the northern portion of Florida, above referred to, unduly discriminate against shippers in interstate commerce, was made without any substantial evidence to support same in that all the evidence established that there was not and could not be any movement of logs from said northern portion of Florida to points in Georgia, nor was there any evidence to establish that if there should be any such movement it would be under substantially similar circumstances and conditions as the movement between points in Florida, and that said finding of the Commission is therefore arbitrary and is null and void.

(f) That said Commission, after finding that any intrastate rates in Florida lower than the rates prescribed by it for application between points in northern Florida and points in Georgia "result, and will result, in undue preference and advantage to shippers of intrastate traffic within the State of Florida and undue prejudice to shippers of interstate commerce from points in the State of Florida to

points in the State of Georgia," further found that such intrastate rates in Florida would result "in unjust discrimination against interstate commerce."

(g) That in finding that the rates on the lines of the Atlantic Coast Line Railroad Company in the State of Florida would result in unjust discrimination against interstate commerce, the Commission went beyond the issues presented to it by the parties, in that there was no contention on the part of the Georgia Public Service Commission or any intervener that the rates within Florida cast a burden on interstate commerce or discriminated against interstate commerce as a whole, because, on the contrary, the Georgia Public Commission contended that the rates applicable within the state of Florida were just and reasonable rates and should be applied to interstate transportation.

[fol. 1425] (h) That there was no substantial evidence to support the finding that the intrastate rates in Florida were such as to cast a burden upon or discriminate against interstate commerce, as a whole, and that such finding of the Commission was made without any substantial evidence to support same and the order of the Commission as amended based on such finding as arbitrarily made and is null and void and of no effect.

(i) Such report and said order as amended, as aforesaid, are unlawful because under the facts of record in such proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order so amended.

(j) Such report and "Said Order" as amended, as aforesaid, are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other

pending proceeding or order of investigation of such Commission involving any such subject matter.

(k) Such report and "Said Order" as amended as aforesaid are unlawful because thereby the Interstate Commerce Commission has sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within a restricted and limited portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate Commerce Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 or the Interstate Commerce Act. Therefore, such order unlawfully embraces within its territorial scope [fol. 1426] freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

(l) The said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the same Commission was and is without jurisdiction to enter its said order.

Forasmuch, therefore, as your Orator is without remedy save in the Court of Equity and to the end that the Defendants, the United States of America and the Interstate Commerce Commission, and the Intervenor, Georgia Pub-

lic Service Commission, and each of them, may, if they can show why your Orator should not have the relief herein prayed, and may full, true, direct and perfect answers make to this Supplemental Bill, to the best and utmost of their respective knowledge, remembrance, information and belief to each and every of the matters and things herein set forth, as if specifically interrogated, your orator would therefore pray:

First. That process may issue against the Defendants, United States of America and the Interstate Commerce Commission and the Intervenor, Georgia Public Service Commission with service thereof and of this Supplemental Bill in the manner prescribed by statute in such cases made and provided.

Second. That this Honorable Court will grant your Orator an interlocutory order enjoining, setting aside, annulling and suspending the enforcement of such part or parts of the order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, that required or attempted to require the Atlantic Coast Line Railroad a common carrier, subject to the jurisdiction of the administrative regulatory commission of the State of Florida to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which are the same as those prescribed by said Interstate Commerce Commission in said Order of August 2, 1928, as reasonable for transportation in Interstate Commerce, northbound from [fol. 1427] points of origin on the Atlantic Coast Line in Florida, north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on said company's lines in the State of Georgia, without first having the authority of the State of Florida so to do; and that such interlocutory order continue in force and effect until further order of this Court.

Third. That upon final hearing there will be made and entered a decree and order of this Court enjoining, setting aside, annulling and suspending that portion of the order of the Interstate Commerce Commission entered by it on

August 2, 1928, in docket #18364, entitled Georgia Public Service Commission versus the Atlantic Coast Line Railroad (146 I. C. C. 717) as amended by said Interstate Commerce Commission, by its order of February 7, 1929, and by which said Interstate Commerce Commission required the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which shall be the same as those prescribed in said order of August 2, 1928, by said Interstate Commerce Commission in a preceding paragraph thereof, as reasonable for transportation in Interstate Commerce north bound from certain designated points in the State of Florida to destinations in the State of Georgia.

Fourth. That your Orator may have such, every and further relief in the premises as to this Honorable Court shall seem meet and proper, and as equity and good conscience may require.

And your Orator would therefore pray, etc.

Norman, Quirk & Graham, Solicitor- for Complainant.

[fol. 1428] *Duly sworn to by George L. Rutherford. Jurat omitted in printing.*

Tendered Feb. 21, 1929. Sam'l H. Sibley, U. S. Judge.

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[fol. 1429] Exhibit D omitted; printed side page 1269 ante.

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[fol. 1430] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR TEMPORARY INJUNCTION—Filed March 1, 1929

To the Attorney General of the United States, the Interstate Commerce Commission, the Georgia Public Service Commission:

You will hereby take notice that the complainant herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at New Orleans, Louisiana, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a part of that certain order entered by the Interstate Commerce Commission on the 2nd day of August, 1929, in Docket No. 18,364, and the amendment thereto of February 7, 1929, all of which is described in the original bill of complaint herein and in the supplementary bill of complaint in the nature of a Bill of Review and in the petition for Re-hearing, copies of which have been served upon you; and that said application will be heard at New Orleans, Louisiana, at 10 o'clock A. M., on the 7th day of March, 1929.

Dated this 23 day of February, 1929.

J. V. Norman, Solicitor for the Complainant.

Service, by copy, of the within application and notice is hereby acknowledged this 26th day of February, 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the Attorney General of the United States. J. Stanley Payne, for the Interstate Commerce Commission. Jas. A. Perry, Chairman, for the Georgia Public Service Commission.

This Mch. 1, 1929.

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[fol. 1431] IN UNITED STATES DISTRICT COURT

ORDER ENTERTAINING PETITION FOR REHEARING AND TO SHOW CAUSE—Filed Feb. 21, 1929

This cause coming on to be heard upon petition for a rehearing herewith presented, and it appearing to the Court that new and additional facts and matters have developed since this Court's decision and final decree entered herein on January 17, A. D. 1929, and it further appearing that the term of this Court at which said opinion and decree was entered has not expired, upon consideration,

It is, therefore, ordered and decreed:

1. That this Court does hereby entertain said Petition for re-hearing;

2. That the defendants, the United States of America and Interstate Commerce Commission, and the intervenor, Georgia Public Service Commission, and each of them, be and they are each hereby ordered and required to show cause, if they can, on the 7 day of March, A. D. 1929, at New Orleans, La.

a. why the decree of this Court heretofore entered January 17, 1929 should not be opened, vacated and set aside.

b. why a re-hearing should not be granted herein;

c. why the complainant should not be permitted and allowed to file herein its supplemental bill in the nature of a bill of review tendered and presented with said Petition for re-hearing;

d. why the prays of said petition for re-hearing, each and every should not be granted.

[fol. 1432] 3. That a copy of this order and said Petition for re-hearing be served upon the defendants, the United States of America and Interstate Commerce Commission, and the intervenor, Georgia Public Service Commission.

Done and ordered this 21 day of February, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

Received copy of the foregoing order and likewise copy of the petition for rehearing mentioned therein and accept service thereof this the 26 day of February, A. D. 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. J. Stanley Payne, for the Interstate Commerce Commission. Georgia Public Service Commission, by Jas. A. Perry, Chairman.

[fol. 1433] IN UNITED STATES DISTRICT COURT

RETURN TO RULE TO SHOW CAUSE—Filed March 27, 1929

Now comes the United States of America, defendant in the above entitled proceeding, and for its Return to Rule to Show Cause issued against it herein, says:

United States assents to (a) opening of the decree of this Court entered herein on January 17, 1929; (b) granting of a re-hearing herein; (c) the filing by Petitioner of its supplemental bill in the nature of a bill to to review presented with its petition for rehearing.

United States further says, in response to the Rule to Show Cause, that in so far as the Court's said final decree herein dismissed Petitioner's Original Bill, said decree is just, proper and correct and, therefore, should be affirmed upon rehearing, notwithstanding the new matters and things alleged in the supplemental bill. But, inasmuch as this Court, in dismissing said original bill, so construed the order of the Interstate Commerce Commission issued August 2, 1928, as to restrict and limit the state-wide scope and effect of said order, as affecting intrastate rates on logs transported by the Atlantic Coast Line Railroad Company, and thus, in effect, annulled said order to the extent of such restriction and limitation, United States prays that the Court, in reconsidering this cause, give full effect to said order by holding that it validly and lawfully requires said intrastate rates to be increased from and to all points on the Atlantic Coast Line Railroad Company's lines within and throughout the State of Florida, and, thereupon, affirm its decree dismissing said original bill.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

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[fol. 1434] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES TO THE SUPPLEMENTAL BILL OF COMPLAINT—Filed Mar. 27, 1929

United States for answer to the supplemental bill filed herein against it says:

I

United States admits the allegations in paragraphs I, II, III and IV.

II

United States denies the allegations of paragraph V and specifically denies that the purpose, intent and effect of the order issued February 7, 1929, was or is "to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court." It alleges that the purpose and intent of the order issued February 7, 1929, was to reiterate and restate beyond possible misconception that by its order of August 2, 1928, the Interstate Commerce Commission intended to and did require the Atlantic Coast Line Railroad Company to establish, publish and maintain the intrastate rates in question throughout the State of Florida and not merely from and to intrastate points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs.

III

United States denies generally the allegations and conclusions made and alleged in paragraph VI, with this exception: United States admits the allegations of sub-paragraph (f) of said paragraph VI.

Answering sub-paragraph (b) of paragraph VI United States denies that the findings of the Interstate Commerce Commission with respect to the intrastate rates were not confined or restricted to any particular portion of the State of Florida and that its finding in this respect is in the following words:

[fol. 1435] We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

IV

Except as herein expressly admitted, United States denies the truth of each and every allegation and conclusion contained in the supplemental bill in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of August 1, 1928.

Wherefore, having fully answered, defendant prays that the supplemental bill be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

*Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

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[fol. 1436] In United States District Court

[Title omitted]

Order Granting Petition for Rehearing, etc.—Mar. 7, 1929

The above numbered and entitled causes came on this day to be heard upon the petition filed on behalf of the complainants for a rehearing herein and for leave to file a supplemental bill of complaint, and also, upon the motion of the Atlantic Coast Line Railroad Company for leave to intervene;

And, upon consideration thereof;

It is ordered that the petition of the complainants be granted, that the causes be re-opened and that complainants are permitted to file their supplemental bill of complaint herein;

It is further ordered that the motion of the Atlantic Coast Line Railroad Company be granted, and accordingly that the petition of intervention of said Atlantic Coast Line Railroad Company be filed of record.

[fol. 1437] In United States District Court

[Title omitted]

Order Referring Intervention to Trial on Merits—Mar. 7, 1929

Whereupon, after hearing argument of solicitors for the parties in interest, and on consideration thereof, it is ordered that the intervention herein, be referred to the trial of this case on the merits.

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[fols. 1438 & 1439] Minute entries of argument and submission omitted in printing.

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[fol. 1440] In United States District Court

Petition to Intervene of Atlantic Coast Line Railroad Company—Filed March 27, 1929

Now comes the Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

(1) It is interested in the above entitled proceeding. It was the respondent in cause No. 18,364 before the Interstate Commerce Commission, in which the Georgia Public Service Commission was the complainant. It is affected by the order of the Interstate Commerce Commission made in said cause and will be affected by any order which this court may enter thereunder.

(2) Wherefore, petitioner prays that it be allowed to intervene in this cause.

Atlantic Coast Line Railroad Company, by F. B. Greer, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Attys.

The foregoing petition is granted and the Atlantic Coast Line Railroad Company is allowed to intervene in this cause.

This 7 day of March, 1929.

Sam'l H. Sibley, U. S. Judge.

[fol. 1441] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRELIMINARY MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENER, RE PETITION FOR REHEARING

To the Honorable the Judges of the District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, the Intervener in the above mentioned cause, and before pleading to the merits of this case respectfully represents unto this court as follows:

1

The supplemental pleadings in the cases filed as companion cases to this case show that on the 30th day of January, 1929, the Railroad Commissioners of Florida caused to be entered an order (No. 979) wherein and whereby they undertook to declare that all then existing Florida intrastate rates for the transportation of logs of the kind involved in this cause should continue in force and effect throughout the State, except to the very limited extent set out therein. The said order No. 979 purports to be effective over all the lines of the Atlantic Coast Line Railroad Company in the State of Florida for the transportation of logs, except cedar, moving northward in one direction from points of origin on the lines of the Atlantic Coast Line [fol. 1442] Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

2

The said supplemental pleadings also show that the Railroad Commissioners of Florida filed suit in the Circuit Court of Duval County, Florida, in the name of the State of Florida, wherein the Atlantic Coast Line Railroad Company has been restrained from enforcing any rates on logs in Florida except those set out in the said order No. 979 of the said Florida Railroad Commission, and that inter-

locutory injunction was granted thereon against the Atlantic Coast Line Railroad Company.

3

The said supplemental pleadings further show that an ancillary bill was filed in connection with removal proceedings and the District Court of the United States for the Southern District of Florida denied to the Atlantic Coast Line Railroad Company an order restraining and enjoining the persons who are the Railroad Commission of Florida from enforcing the above mentioned injunction and dismissed this Intervener's said ancillary bill.

4

The said supplemental pleadings also show that this Intervener filed its bill in the United States District Court for the Northern District of Florida, seeking to restrain by injunction the enforcement of the said order No. 979 of the Florida Railroad Commission. The said bill was filed on the ground that said order was unconstitutional in that it conflicted with the commerce clause of the Constitution of [fol. 1443] the United States and the Acts of Congress made in pursuance thereof, especially the Act of Congress known as the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto, and particularly Section 13, sub-paragraph 4 thereof. The Judge of said United States District Court refused to call together three Judges for the trial of said cause, and dismissed Intervener's said bill.

5

Intervener alleges that the order of the United States District Court for the Southern District of Florida, above mentioned in the ancillary proceedings, has been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and a restraining order has been granted thereon until the further order of that Court, restraining the enforcement of the said order No. 979 and of the said order of the Circuit Court of Duval County, Florida, restraining the persons who are the Florida Railroad Commission from enforcing said order No. 979 and the said order of the Circuit Court of Duval County, Florida.

6

A motion to be allowed to file a petition for writ of mandamus has been filed by this Intervener in the Supreme Court of the United States, seeking a writ of mandamus to the Honorable, the Judge of the United States District Court for the Northern District of Florida, and to the State Court, requiring the Judge of said Court to call together two other Judges to his assistance to hear this Intervener's said bill.

7

Intervener alleges that the complainant in this case seeks [fol. 1444] to take advantage of this extraordinary and unusual condition while it seeks discretionary remedies from this Court, including the reopening of the final decree dismissing their bill, and also seeking discretionary relief by injunction.

8

Intervener alleges that said order of the Florida Railroad Commission was illegal; that the order of the Circuit Court of Duval County, Florida, was illegal; and the said order of the United States District Court for the Northern District of Florida was likewise illegal, for that the said Court, presided over by one Judge, had no jurisdiction to enter the order which was entered, and which is above referred to. Nevertheless, each of said order and judgments is being relied upon by complainants, and neither judgment has been reversed.

9

Intervener avers that it is impracticable for this Court to give full relief in this situation while the above mentioned proceedings remain in the condition above described, or while complainant is seeking to use any of said orders or proceedings. If the order of the Circuit Court of Duval County, Florida, remains in force, this intervener is enjoined, and will continue to be enjoined, from complying with any order which this Court may make in this cause, except in so far as it may happen to coincide with that order. If the Florida Commission's order is in force the Interstate Commerce Commission's order cannot go into

effect, except in the said limited territory. If the order of [fol. 1445] the District Court of the United States for the Northern District of Florida remains in effect this Intervener is further embarrassed thereby. The complainant is thus seeking to impede the exercise of the jurisdiction of this court in the premises, unless that jurisdiction be exercised according to its conception of its rights.

10

Intervener respectfully avers that the motion for rehearing and the supplemental pleadings of the complainant in this cause should not be considered by this court until those things which embarrass this court in the determination of the subject matter, and which are herein referred to, shall have been removed.

Wherefore this Intervener respectfully prays that this Honorable Court do not grant the petition to reopen this case or grant a rehearing, or otherwise proceed therein, until the complainant shall have removed or caused to be removed the orders, judgments and decrees above referred to, or until it shall have done those things which may be required by this court, necessary to remove the conflict of jurisdiction which has been caused by the said proceedings; and that none of the prayers of the complainant be considered unless and until the conditions referred to be relieved by it.

Respectfully submitted.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Counsel for Atlantic Coast Line Railroad Company.

Received in Clerk's Office, March 27, 1929

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[fol. 1446] In United States District Court

[Title omitted]

Answer of Atlantic Coast Line Railroad Company, Intervener

Now comes the Atlantic Coast Line Railroad Company, the intervener in the above mentioned cause and answers

the pleadings which are filed as a supplemental bill and for answer says:

I

(a) This intervener was the defendant in cause No. 18364 in the Interstate Commerce Commission in which the Georgia Public Service Commission was the petitioner.

(b) Intervener owns and operates about 2,200 miles of rail line in the State of Florida; that it does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. It operates about 5,100 miles of its own line of rail, and that it is engaged in interstate and intrastate common carriage by railroad.

(c) Intervener admits the filing of the bill in the United States District Court for the Northern District of Georgia, as set out in paragraph 1 of the bill in this cause. The bill itself is referred to for its contents.

(d) It is admitted that answers were filed to said bill [fol. 1447] by the United States of America and the Interstate Commerce Commission, and that the Georgia Public Service Commission intervened and filed its answer.

(e) It is admitted that two other bills were filed at the same time and in the same court. It is admitted that there was a hearing in said cause as is set out in paragraph 1 of the bill in this case and that an opinion was handed down and that a decree was rendered dismissing each of the original bills. The decree and the opinion are referred to.

II

Intervener denies the allegations of paragraph 2 of the bill in this case and more fully answers the same hereinafter.

III

Allegations of paragraph 3 of the bill require no answer.

IV

Allegations of paragraph 4 of supplemental bill are admitted.

V

Answering paragraph 5 of the supplemental bill, intervener says that the Interstate Commerce Commission did enter its order of February 7, 1929, above referred to. That the said order was made for the purpose of making it clear that its order of August 2, 1928 applied throughout the entire State of Florida over the lines of the Atlantic Coast Line Railroad Company without exception, and intervener says that this was necessary in order to remove the unjust discrimination against interstate commerce which was being worked by the Florida intrastate rates on logs, commonly known as the Cummer scale of rates.

[fol. 1448]

VI

This intervener denies that the order of the Commission of August 2, 1928, as amended, is arbitrary and unreasonable or beyond the power of the Interstate Commerce Commission, or that it is invalid or unlawful for any of the reasons mentioned in paragraph 6 of the supplemental bill in this cause.

Further answering said paragraph, intervener denies that said order of the Interstate Commerce Commission is void because of any matter or thing set out in sub-paragraphs A, B, C, D, E, F, G, H, I, J, K, L.

Further answering the supplemental bill, this intervener says:

VII

The order of the Interstate Commerce Commission was issued after an investigation and the taking of a great deal of evidence orally and by way of statistical data. Petition was filed by the Georgia Public Service Commission with the Interstate Commerce Commission in May, 1926, and an order was rendered on August 2, 1928. In the meantime evidence was taken before an examiner of the Commission on October 20th, 21st and 22nd, 1926, at Valdosta, Georgia.

Further evidence was taken in Jacksonville, Florida, before an examiner of the Commission on January 18th, 19th, 20th and 21st, 1927. There were 53 exhibits offered and received in evidence. There were about 30 witnesses examined. The subject was investigated with great detail. Many shippers and carriers intervened in said cause and the Florida Railroad Commissioners appeared in defense of the then Florida rates which were in question.

VIII

Ample evidence was offered and received not only to justify, but to require, the order of the Interstate Com-[fol. 1449] merce—which order notified and required this intervener to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain in intrastate commerce within the State of Florida those rates which this intervener has put into effect and is maintaining on logs, except walnut, cherry and cedar, and which rates are otherwise described in the pleadings in this cause.

IX

The evidence before the Interstate Commerce Commission showed:

(a) That the Florida Commissioners had in writing stated that the rates in Florida which were complained of were too low and were such as might be deemed confiscatory;

(b) That the rates which the Interstate Commerce Commission has ordered into effect in its order of August 2, 1928, are on substantially the same basis as the present rates under the scale prescribed by the Interstate Commerce Commission from points in South Carolina south of Columbia to Savannah, Georgia, and from South Carolina to destinations in North Carolina, and on logs from points on intervener's line south of Charleston to Savannah;

(c) That the charges per car of 50,000 pounds on logs from Live Oak, Florida, to Jacksonville, Florida, 128 miles,

were $16.00, while from the same point of origin to Waycross, Georgia, 83 miles, the charges on the same logs are $35.00. This illustration is only one of many illustrations covered by the evidence as to the disparity of rates interstate and intrastate;

[fol. 1450] (d) That the rate intrastate in Florida on logs under the Florida scale known as the Cummer Scale, which was the scale under attack in this case, was not so much as one-half of the rate on the same logs moving over intervener's line from points in Florida to points in Georgia. To illustrate: The rate on a car of 50,000 pounds from Jasper, Florida, to Lake City, Florida, a distance of 69 miles, is $11.50 under the Cummer Scale, and from Jasper, Florida, to Valdosta, Georgia, a distance of 59 miles, the rate is $27.50.

(e) That the rates on logs in cars of 50,000 pounds covering interstate movements from points of origin in Florida to Georgia destinations were higher than the rates then applicable to the same transportation of the same commodity moving in the same circumstances intrastate in Florida over the lines of this intervener by from 46% to 233%;

(f) That a manufacturer of lumber in Georgia who would draw his logs from Florida points would be at a disadvantage in the eastern markets of about $60.00 per car of lumber as compared with the Florida producer who got his logs in Florida and moved them the same distances under the same circumstances of transportation. The said eastern markets were desirable markets to the Florida and Georgia manufacturers;

(g) That a difference of $10.00 to $12.00 per car was a sufficient difference to keep a manufacturer of lumber thus discriminated against out of competition with the favored manufacturer;

(h) That the rates under said Cummer Scale were the lowest rates known to expert rate men for the transportation of logs anywhere in the United States;

(i) That the rates under the said Cummer Scale, that is the Florida intrastate scale complained of in said cause, are

[fol. 1451] only from ⅓ to ½ of the rates on other commodities having like transportation characteristics, moving in similar circumstances, such as sand, gravel, lime, cement and brick;

(j) That the rate complained of was very much less than the rate for the same class of transportation on any other line of railroad doing business in Florida;

(k) That there are 64 saw mills along this intervener's line in Georgia within 170 miles of Florida, and that these mills cannot compete with the Florida producer of lumber in the eastern markets because of the difference in the rates on the inbound logs, which rates were the subject of investigation in said cause.

(l) That the amount of the burden on interstate commerce made by the unduly low rates on said intrastate shipments of logs in Florida under the said Cummer Scale of rates, which were under attack in said cause, would amount to several millions of dollars;

(m) That the volume of the traffic covered by the said logs was such that the discrimination against interstate commerce would continue for many years;

(n) That the difference in the rates under the Cummer Scale and in those under the properly established interstate scales applicable to logs moving over the lines of this intervener was so great that the necessary commercial effect was to require the movement of logs in Florida to Florida manufacturing points, and to prevent the movement of said logs to Georgia manufacturing points, although the circumstances of transportation were equally as advantageous to the Georgia manufacturing points;

(o) That the effect of the rates under the Cummer Scale was to undertake to preserve this advantage to intrastate [fol. 1452] commerce at the expense of interstate commerce;

(p) The evidence showed many other kinds of discriminations which were unjust and unduly prejudicial to interstate commerce; and also showed that the discriminations above pointed out were unjust, unduly prejudicial and unlawful.

X

Intervener alleges that under date of January 30, 1929, the Florida Railroad Commissioners, to-wit, A. S. Wells, E. S. Matthews and Mamie G. Eaton, adopted a writing which they called their order No. 979, which is set out in the exhibits filed in this cause, which order undertook to prevent the Atlantic Coast Line Railroad Company, this intervenor from applying the rates prescribed by the order of the Interstate Commerce Commission of August 2, 1928 except in a very limited way, and over a small mileage of this intervenor, and to so limit the said order of the Interstate Commerce Commission that it would have no practical effect whatever. The said writing of the Florida Commission was unlawful because it dealt with a subject matter over which the said Commissioners have no jurisdiction, to-wit, an order of the Interstate Commerce Commission, and it undertook to amend or annul said order in whole or in part; also because it undertook to make an order in conflict with the said order of the Interstate Commerce Commission; also because it undertook to apply its own construction of the said order of the Interstate Commerce Commission, which construction was in conflict with the opinion rendered by this Court in the same matter on the 17th of January, 1929. In all events, the said order of the Florida Railroad Commissioners was unnecessary and unlawful. Thereafter, the Florida Commissioners caused a proceeding to be instituted to the Circuit Court of Duval County, Florida [fol. 1453] for the purpose of restraining and enjoining this intervenor from complying with the order of the Interstate Commerce Commission except as limited as aforesaid by the aforesaid order No. 979; and in said cause the said Circuit Court entered its order restraining and enjoining the Atlantic Coast Line Railroad Company as prayed. The proceedings in said Circuit Court of Duval County are unlawful and are null and void for the reason that said Court undertook to deal with a matter beyond its jurisdiction, that subject matter being the amending or annulling in whole or in part of the said order of the Interstate Commerce Commission. It was further null and void because the said cause had been removed to the proper United States District Court prior to the entry thereof.

XI

The said order of the Florida Commissioners, No. 979, and the said proceedings by the Florida Commissioners in the Circuit Court of Duval County, Florida, make a direct conflict between the authority of the Federal Government and the acts of those who are undertaking to enforce the powers of the State of Florida.

XII

The Wilson Lumber Company, complainant in this case, is seeking to avail itself of the aforementioned order of the Florida Railroad Commissioners, No. 979, and of the said order of injunction issued by the Circuit Court of Duval County, Florida.

[fol. 1454] XXIII

The rates for the intrastate transportation of logs in Florida prescribed as aforesaid by the Interstate Commerce Commission pursuant to lawful authority are the only lawful rates for such intrastate transportation of logs. Intervenor affirms that the said order #979 of the Florida Commission is unlawful and void and that the aforementioned order of the Circuit Court of Duval County, Florida is also unlawful and void. Any order which this Court may make in this cause sustaining the order of the Interstate Commerce Commission should in order to afford completely effective relief to intervenor, enjoin the said Florida Commissioners and their counsel and employees from enforcing either the said order of the Florida Commissioners or the said order of the Circuit Court of Duval County, Florida.

XIV

Wherefore intervenor prays:

(1) That the prayers of the complainants be denied;

(2) That the Interstate Commerce Commission's order dated August 2, 1928, effective over all of the lines of this intervenor in the State of Florida, without exception, be held to be valid;

(3) That this court do those things and enter such orders and decrees as may be necessary or proper to make effective the said order of the Interstate Commerce Commission;

(4) That all such orders, interlocutory and/or final, as may be necessary or appropriate to full relief in the premises be entered;

(5) Intervenor prays such other and further relief as may be meet and proper in the premises.

F. B. Grier, Carl H. Davis, A. E. Kay, Alston, Alston, Foster & Moise, Attys. for A. C. L. R. R. Co.

[fol. 1455] *Duly sworn to by Frank L. Glover. Jurat omitted in printing.*

Received in Clerk's office March 27, 1929.

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[fols. 1456 & 1457] Orders of I. C. C. omitted; printed side page 112 ante.

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[fols. 1458-1461] Opinion on rehearing omitted; printed side page 217 ante.

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[fol. 1462] IN UNITED STATES DISTRICT COURT

In Equity. No. 512

THE WILSON LUMBER COMPANY OF FLORIDA, Complainant,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINAL DECREE ON REHEARING—Filed April 22, 1929

In the above stated case, on petition of complainants to open our former decree entered on January 17th, 1929, denying relief and dismissing the original bill, a rehearing was granted and said decree reopened, and thereupon the

Atlantic Coast Line Railroad Company, on its petition, was allowed to intervene in support of the order of the Interstate Commerce Commission of August 2nd, 1929.

The case was submitted for final decree on the reargument and rehearing, to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Samuel H. Sibley, United States District Judge, and Hon. Benjamin C. Dawkins, United States District Judge.

After hearing argument on the same evidence as at the first hearing, and the Court being fully advised:

It is, for the reasons stated in our opinion of March 22nd, 1929 (which opinion is duly filed as a part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and [fol. 1463] the relief prayed denied.

This April 17th, 1929.

R. W. Walker, United States Circuit Judge. Ben. C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

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[fol. 1464] In United States District Court

[Title omitted]

Petition for Appeal

The Wilson Lumber Company of Florida, complainant, feeling itself aggrieved by the final order or decree of the United States District Court for the Northern District of Georgia, dated April 17, 1929 and entered April 22, 1929, which denied the relief sought and dismissed the bill and supplemental bill, prays an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. It prays that its appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

J. V. Norman, Norman, Quirk & Graham, Solicitors for Wilson Lumber Company of Florida.

June 6th, 1929.

[fol. 1465] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 6, 1929

The Wilson Lumber Company of Florida, by its counsel, now comes and in connection with its petition for appeal files the following Assignment of Errors upon which it will rely on its appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered April 17, 1929.

The District Court erred:

I

In denying the relief prayed and dismissing the bill and the supplemental bill.

II

In holding that the order of the Interstate Commerce Commission, of August 2, 1928, as amended on February 7, 1929, was within the lawful powers of the Commission.

III

In holding that said order of the Interstate Commerce Commission was within the issues sought to be investigated.

IV

In holding that said report and order of the Interstate Commerce Commission was made after a full hearing of the questions determined in the report and upon which the order was predicated.

[fol. 1466]

V

In holding that said order of the Commission was supported by sufficient evidence and was not arbitrary.

VI

In holding that the said order of the Interstate Commerce Commission did not constitute an unlawful invasion

of the rights and powers of the State of Florida reserved to it by the Constitution of the United States.

VII

In holding that the Interstate Commerce Commission "was at liberty to supplement" the facts shown.

VIII

In holding that the Commission was justified "in rejecting the inclusion of slight net income" asserted by the witnesses and predicating said holding upon the right of the Commission to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the Railroads must have in such matters."

IX

In holding that the Interstate Commerce Commission is vested with authority to condemn an intrastate rate charged by a single railroad on a single commodity on the ground that such rate discriminates against general interstate commerce which it is held that there is no discrimination against particular interstate commerce or against shippers and localities in interstate commerce.

X

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

[fol. 1467]

XI

In failing and refusing to find that there was no substantial evidence before the Interstate Commerce Commission supporting or tending to support the finding by the Commission that the continued maintenance by the Atlantic

Coast Line Railroad of the Florida intrastate log rates would subject interstate commerce to unjust discrimination in violation of Sections 13 and 15a of the Interstate Commerce Act.

XII

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that the Florida intrastate log rates of the Atlantic Coast Line Railroad were less than reasonably compensatory.

XIII

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

XIV

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of the Interstate Commerce Act, and without any request or petition by said Atlantic Coast Line Railroad Company to either the Interstate Commerce [fol. 1468] Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rates.

XV

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were

not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated and maintained by the carrier, and therefore not "made or imposed by authority of any State", within the description of Section 13 (3) of said Act.

XVI

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XVII

In failing and refusing to hold that Section 13 of the Interstate Commerce Act is in violation of the Constitution of the United States, and especially the Tenth Amendment thereto, if same be construed to vest in the Interstate Commerce Commission the powers here asserted.

XVIII

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

[fol. 1469]

XIX

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul not exceeding 170 miles and in any portion of such State, although there was no case or controversy

submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

XX

In failing and refusing to hold that the proceeding before the Commission was essentially a proceeding instituted in behalf of Georgia shippers to properly relate the rates on logs from a restricted territory in Northern Florida to points in the state of Georgia with the rates on logs in the said restricted territory in Northern Florida and did not present nor could not present the question that the rates on logs throughout Florida constituted an undue discrimination against general interstate commerce or put an undue burden on the revenues arising from interstate commerce and accruing to the carriers subject to the Interstate Commerce Act and that, therefore, the Commission was without power to make the order complained of.

Wherefore petitioner prays that the final order or decree of the District Court, entered April 17, 1929, be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Commission entered on August 2nd, 1928 (and changed in language for the purpose of clarification on February 7, 1929) in the proceeding before the Commission cited Georgia Public Service Commission v. A. C. L. [fol. 1470] R. R. Co., 146 I. C. C. 717, in so far as said order prescribes for future effectiveness the rates to be applied to the transportation of logs intrastate within the State of Florida over the lines of the Atlantic Coast Line Railroad Company.

Wilson Lumber Company of Florida, by J. V. Norman; Norman, Quirk & Graham, Counsel.

Louisville, Ky., June 6th, 1929.

[fol. 1471] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Filed June 19, 1929

The complainant having filed its petition for appeal herein the same is hereby granted and the complainant is hereby allowed to appeal said cause, and

It is ordered that said appeal be and the same is hereby entered in the Supreme Court of the United States upon the filing of a bond by said complainant in the sum of Five Hundred Dollars ($500.00) with good and sufficient surety to be approved by this Court conditioned upon the said complainant prosecuting its appeal to effect, and answering all costs if it fails to make its plea good.

This 6th day of June, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

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[fol. 1472] Bond on appeal for $500.00, approved and filed June 13, 1929, omitted in printing.

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[fol. 1473] IN UNITED STATES DISTRICT COURT

ACKNOWLEDGMENT OF SERVICE OF GEORGIA PUBLIC SERVICE COMMISSION, ATLANTIC COAST LINE RAILROAD CO., INTERVENER—Filed June 20, 1929

Service is hereby acknowledged by each, the Georgia Public Service Commission, and the Atlantic Coast Line Railroad Company, defendants, of copies of the following described appeal papers in the above entitled cause:

1. Complainant's petition for appeal.
2. Complainant's assignment of errors.
3. Order of the District Court granting appeal.
4. Præcipe for transcript of record.

Jas. A. Perry, Att'y for Georgia Public Service Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company.

Dated this 20th day of June A. D., 1929.

[fols. 1474-1483] Præcipe for transcript of record omitted; printed side page 235 ante.

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[fols. 1484-1487] Citation, in usual form, showing service on Elmer B. Collins et al., omitted in printing.

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[fol. 1488] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 1489] IN UNITED STATES DISTRICT COURT

In Equity. No. 514. In Equity. No. 511. In Equity. No. 512

[Titles omitted]

ORDER FURTHER ENLARGING TIME WITHIN WHICH TO DOCKET THE CASES AND FILE THE RECORD THEREOF—Filed in U. S. Supreme Court Nov. 5, 1929.

It appearing that the parties and their respective counsel [fol. 1490] are distant; and that further enlargement of time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on the Appeals, and for other good cause shown,

It is ordered that the time in which the State of Florida, et al., Brooks-Scanlon Corporation, et al., and the Wilson Lumber Company of Florida, complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it

is hereby further enlarged to and including Monday, December 2, 1929. No further time will be granted. Oct. 28, 1929.

R. W. Walker, United States Circuit Judge. Ben L. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

Dated this — day of ——, 1929.

The entry of the foregoing order enlarging the time within which to docket the cases and file the record thereof is hereby consented to.

Fred H. Davis, as Attorney General; T. T. Turnbull, [fol. 1491] Solicitors for Complainants in No. 514. Geo. L. Rutherford, H. P. Adair, C. W. Mitchell, August Gutheim, Chas. E. Cotterill, Solictors for Complainants in No. 511. J. V. Norman, Solicitor for Complainant in No. 512. Elmer B. Collins, Solicitor for United States of America. J. Stanley Payne, Solicitor for Interstate Commerce Commission. Jas. A. Perry, Solicitor for Georgia Public Service Commission. Robt. C. Alston, Alston, Alston, Foster & Moise, Solicitors for Atlantic Coast Line Railroad Company, Defendants and Intervening Defendants in Nos. 514, 511, and 512.

[fol. 1492] [File endorsement omitted.]

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[fol. 1493] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 493

STATEMENT OF POINTS ON WHICH STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, ET AL. INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed Dec. 10, 1929

State of Florida and A. S. Wells, E. S. Mathews, et al., Appellants in this appeal for the reversal of the decree of the District Court for the Northern District of Georgia, will rely upon all the points raised by their Assignments of Error herein, including among others the following points:

I. The order of the Interstate Commerce Commission constitutes an invasion, in contravention of the Constitution of the United States, of the sovereign rights of the State of Florida reserved to it under said Constitution.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

[fol. 1494] II. The construction placed by the Interstate Commerce Commission and by the trial court in their respective orders, opinions and decrees below render Section 13 of the Interstate Commerce Act as amended unconstitutional and void insofar as it is applicable to the controversy at bar.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

III. The order of the Interstate Commerce Commission constitutes an act in contravention of the Constitution of the United States.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

IV. The order of the Interstate Commerce Commission was beyond the scope of the power conferred upon it by Acts of Congress or any of them.

NOTE.—This point is applicable to Assignments of Error I, II, XIX, and XXVII.

V. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This point is applicable to Assignments of Error I, III, IV, V, IX, XI, XII, XVI, XXI, XXII, XXIV, and XXVII.

VI. The order of the Interstate Commerce Commission at bar, being state wide, was beyond the scope of the issues upon which the controversy was actually tried before the Interstate Commerce Commission.

NOTE.—This point is applicable to Assignments of Error I, VI, VII, VIII, X, XIV, XVII, XX, and XXVII.

VII. The order of the Interstate Commerce Commission was made without the full hearing required by Section 13

of the Interstate Commerce Act as amended as a condition precedent to the entry of said order.

NOTE.—This point is applicable to assignments of Error [fol. 1495] I, XIII, XVIII, XXV, XXVI, and XXVII.

VIII. The order of the Interstate Commerce Commission, state wide in its scope, was made without the investigation and hearing required by Section 13 of the Interstate Commerce Act as amended, as a condition precedent to the entry of such order fixing intrastate rates for the transportation of logs wholly within a State.

NOTE.—This point is applicable to Assignments of Error I, XVIII, XXV, XXVI, and XXVII.

IX. The Interstate Commerce Commission was without power to regulate or fix intrastate rates for the transportation of logs wholly within the State of Florida because such rates were voluntarily initiated and maintained by the carrier and were not rates "made or imposed under the authority of any State" within the meaning of Section 13 of the Interstate Commerce Act as amended.

NOTE.—This point is applicable to Assignments of Error I, X, XV, and XXVII.

X. The District Court, in order to uphold the power of the Interstate Commerce Commission to fix a statewide intrastate rate, found (and that without substantial evidence) that "on the face of things the log rate is too low and likely to burden the carrier", and in so doing exercised an administrative power not possessed by the Court.

NOTE.—This point is applicable to Assignments of Error I, XXIII, and XXVII.

XI. The District Court erred in holding that the Interstate Commerce Comimssion "was at liberty to supplement" the facts shown and to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida Railroad Commissions and the Railroads must have in such matters."

NOTE.—This point is applicable to Assignments of Error I, VI, VII, VIII, and XXVII.

[fol. 1496] XII. The District Court should have granted the relief prayed in the bill and the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This point is applicable to Assignments of Error I and XXVII.

Parts of the Record Necessary for the Consideration of the Points Above Mentioned

And the said Appellants respectfully represent that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

Fred H. Davis, as Attorney General of the State of Florida, Appellant. T. T. Turnbull, of Counsel.

December 9, 1929.

Service of copy of foregoing statement of points to be relied upon is hereby asknowledged this — day of December, 1929.

August S. Gutheim, Solicitor for Brooks-Scanlon Corporation et al., Appellant-, No. 494. J. V. Norman, Solicitor Wilson Lumber Company of Florida, Appellant, No. 495. Elmer B. Collins, for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

[fol. 1497] Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, 1929.

Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1498] [File endorsement omitted.]

[fol. 1499] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 494

STATEMENT OF POINTS ON WHICH BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed Dec. 10, 1929.

Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company will rely on the following points in brief and upon oral argument on the hearing of this appeal for the reversal of the decree of the District Court for the Northern District of Georgia.

I. The order of the Interstate Commerce Commission was beyond the scope of the issues raised in the proceeding before it wherein said order was entered.

NOTE.—This is applicable to our Assignments of Error VI, VII, VIII, X, XIV, XVII, and XX.

II. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This is applicable to our Assignments of Error III, IV, V, IX, XI, XII, XVI, XXI, XXII, and XXIV.

[fol. 1500] III. The order of the Interstate Commerce Commission was made without the full hearing required as precedent thereto by the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error XVIII, XXV, and XXVI.

IV. The order of the Interstate Commerce Commission was beyond the scope of its statutory power.

NOTE.—This is applicable to our Assignments of Error II, and XIX.

V. The Interstate Commerce Commission, in condemning existing rates and in fixing rates for the future, is not authorized or empowered to "supplement" the facts shown

of record before it, or to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

NOTE.—This is applicable to our Assignments of Error XXI and XXII.

VI. The Interstate Commerce Commission was without power to regulate and fix the intrastate rates for transportation of logs wholly within the State of Florida because said rates were voluntarily initiated and maintained in effect by the carrier and were not rates "made or imposed by authority of any State" within the description of Section 13 (3) of the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error X and XV.

VII. The order of the Interstate Commerce Commission constituted an act in contravention of the Constitution of the United States.

NOTE.—This is applicable to our Assignments of Error II, XIII, and XIX.

VIII. The District Court, in order to uphold the jurisdiction and order of the Interstate Commerce Commission, relied upon the Court's own conclusion with respect to the propriety of the rates in controversy, and in so doing exercised administrative power not possessed by said Court.

NOTE.—This is applicable to our Assignments of Error XXIII.

[fol. 1501] IX. The District Court should have granted the relief prayed for in the bill and in the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This is applicable to our Assignments of Error I, and XXVII.

Parts of the Record Necessary for the Consideration of the Points Above Mentioned

And the said Appellants respectfully represent that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors for Appellants.

December 9, 1929.

Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this — day of December, A. D., 1929.

Fred H. Davis, as Atty. Genl., Solicitor for State of Florida and A. S. Wells, E. S. Mathews, et al., etc., Appellant-, No. 493. J. F. Norman, Solicitor Wilson Lumber Company of Florida, Appellant, No. 495. Elmer B. Collins, for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

[fol. 1502] Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, A. D. 1929.

Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1503] [File endorsement omitted.]

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[fol. 1504] In Supreme Court of the United States, October Term, 1929

No. 495

Statement of Points on Which Wilson Lumber Company of Florida Intends to Rely and of Parts of the Record Which are Necessary for the Consideration Thereof—Filed Dec. 10, 1929

Wilson Lumber Company of Florida will rely on the following points in brief and in oral argument on the hearing

of this appeal for the reversal of the decree of the District Court for the Northern District of Georgia.

I. The order of the Interstate Commerce Commission was beyond the scope of the issues tried in the proceeding before it wherein said order was entered.

NOTE.—This is applicable to our Assignments of Error III, X, XIX, and XX.

II. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This is applicable to our Assignments of Error V, XI, XII, XIII, XVI, and XVIII.

[fol. 1505] III. The order of the Interstate Commerce Commission was made without the full hearing required as precedent thereto by the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error IV, XIX, and XX.

IV. The order of the Interstate Commerce Commission was beyond the scope of its statutory power.

NOTE.—This is applicable to our Assignments of Error II, IX, XIV, and XV.

V. The Interstate Commerce Commission was without power to regulate and fix the intrastate rates for transportation of logs wholly within the State of Florida because said rates were voluntarily initiated and maintained in effect by the carrier and were not rates "made or imposed by authority of any state" within the description of Section 13 (3) of the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error XIV and XV.

VI. The order of the Interstate Commerce Commission constituted an act in contravention of the Constitution of the United States.

NOTE.—This is applicable to our Assignments of Error II, VI, and XVII.

VII. The District Court erred in holding that the Interstate Commerce Commission "was at liberty to supple-

ment" the facts shown and to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

NOTE.—This is applicable to our Assignments of Error VII and VIII.

[fol. 1506] VIII. The District Court should have granted the relief prayed for in the bill and in the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This is applicable to our Assignments of Error I.

Parts of the Record Necessary for Consideration of the Points Above Mentioned

And the said Appellant respectfully represents that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

J. V. Norman, Solicitor for Appellant.

Services of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, 1929.

Elmer B. Collins, Solicitor for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission. Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1507] [File endorsement omitted.]

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Endorsed on cover: File No-. 34,624, 34,625, 34,626. N. Georgia D. C. U. S. Term No. 493: The State of Florida and A. S. Wells, E. S. Matthews, et al., etc., appellants, vs. The United States of America, Interstate Commerce Com-

mission, et al. Term No. 494: Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, appellants, vs. The United States of America, Interstate Commerce Commission, et al. Term No. 495: Wilson Lumber Company of Florida, appellant, vs. The United States of America, Interstate Commerce Commission, et al. Filed November 27, 1929. File No-. 34,624, 34,625, 34,626.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 493

STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, et al., etc., Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

No. 494

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

No. 495

WILSON LUMBER COMPANY OF FLORIDA, Appellant,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

STIPULATION

The Appellants having, as complainants below, offered in evidence a certified full copy of the record of the proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia P.-S. Commission v. A. C. L. R. R. Co., (R. 190); and said certified full copy of said record having included a document described as "Report proposed by R. M. Brown, Examiner," (R. 191); and as this record as transmitted on appeal to this Court does not contain said "Report proposed by R. M. Brown, Examiner" (See R. 727); the parties by their respective counsel hereby stipulate and agree:

That the attached "Report proposed by R. M. Brown, Examiner," certified to be such by the Secretary of the In-

terstate Commerce Commission, is a true and correct copy of the document so offered and received in evidence in these proceedings in the Court below, and shall, subject to the approval of the Court, be incorporated as such in the record of this Court in these proceedings with like effect as though the same were the original.

Fred H. Davis, as Attorney General of the State of Florida, of Counsel for Appellants in No. 493. Henry P. Adair, Charles E. Cotterill, August G. Gutheim, H. Plant Osborne, Solicitors for Appellants in No. 494. J. V. Norman, Solicitor for Appellant in No. 495. John Lord O'Brien, for the United States of America, Appellee in Nos. 493, 494, and 495. J. Stanley Payne, for Interstate Commerce Commission, Appellee in Nos. 493, 494, and 495. Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee in Nos. 493, 494, 495. Robt. C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee in Nos. 493, 494, and 495.

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INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report proposed by R. M. Brown, Examiner, filed August 15, 1927, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 21st day of April, A. D. 1930.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

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Geo. L. Rutherford.

Exceptions must be filed with Commission and copies served so as to reach opposing counsel on or before Sep. 6, 1927.

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted —— —, ——. Decided —— —, ——.

1. Interstate rates applicable on logs, except walnut, cherry, and cedar in carloads, from Florida points north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Fla., to destinations in Georgia found unreasonable, but not otherwise unlawful. Reasonable maximum scale of rates prescribed for the future.
2. Florida intrastate rates applicable on logs, except cedar, in carloads, not shown to result in undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce and interstate commerce, respectively, or in undue, unreasonable, or unjust discrimination against interstate commerce.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff and E. M. Price for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; J. C. Jackson and H. A. Jackson for Jackson Brothers Lumber Company; J. E. Davies for self; and C. C. Giddens for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and W. E. Kay for defendant.

Frank W. Gwathmey and Henry Thurtell for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and J. A. Streyer for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Tench and Fred Pettijohn for Florida Railroad Commission.

T. J. McGinn for Board of Trade and City of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wilson Cypress Company, and Putnam Lumber Company; Edward P. Sanborn and George L. Rutherford for Brooks-Scanlon Corporation; H. P. Adair for Putnam Lumber

Company; H. P. Osborne for Wilson Cypress Company; E. W. Mitchell for Cummer Cypress Company; J. S. Farish for Southeastern Forest Products Association; J. O. Cassidy and E. C. Green for Jacksonville Traffic Bureau; R. E. Mich for Southern Cypress Manufacturers' Association; and A. G. T. Moore for Southern Pine Association, interveners.

REPORT PROPOSED BY R. M. BROWN, EXAMINER

This proceeding was brought by complainant on behalf of Georgia log shippers. By complaint filed May 3, 1926, it is alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia, are unjust and unreasonable, and, as compared with Florida intrastate rates on logs, in carloads, are unjustly discriminatory and unduly prejudicial. It is also alleged that the Florida intrastate log rates cause undue and unreasonable advantage, preference, and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination against interstate commerce. The commission is asked to prescribe reasonable, nonprejudicial, and nondiscriminatory rates for the future. Rates will be stated in cents per 100 pounds.

While complainant states that the object of its complaint is to secure reasonable rates on logs from all points on defendant's railroad in Florida to all destinations on that line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from points in that portion of Florida lying north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Fla., hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles. The remainder of the State will be termed south Florida. Unless otherwise specified interstate rates as used herein will refer to defendant's rates on logs, except walnut, cherry, and cedar, applicable from north Florida points to Georgia destinations, and Florida rates will refer to the intrastate rates in issue.

Numerous shippers, carriers, and associations of shippers intervened. The Florida Railroad Commission filed no formal petition of intervention, but appeared in defense

of the Florida rates. The Elberta Crate Company intervened in support of the complaint. The Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, Georgia Southern & Florida Railway Company, and the American Short Line Railroad Association, intervened in opposition to the continuance of the Florida rates on their present level and to the extension of such rates interstate into Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and the Putnam Lumber Company, hereinafter called the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Saw Mill Association (now Southeastern Forest Products Association), Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

During the course of the hearing the Florida interveners, the Florida commission, and others interested in maintaining the present level of the Florida rates, moved that the complaint be dismissed on the grounds that evidence had not been submitted by or in behalf of complainant sufficient to constitute a cause of action within the power of the commission to remedy, and that the allegations of the complaint had not been sustained. The evidence of record justifies consideration of this case on its merits. The motion should be denied.

The interstate rates became effective August 15, 1925, as a part of a general revision of log rates throughout defendant's system. This revision is said to have been accomplished for the primary purpose of harmonizing defendant's interstate log rates south of Charleston, S. C. At the present time, however, such rates are relatively higher than defendant's intrastate log rates in the Southeast. The bulk of the log movement on defendant's system is intrastate. Intrastate rates other than those in Florida are not in issue.

The Florida rates are the result of certain so-called rate contracts made by the Jacksonville & Southwestern Railroad Company and defendant, respectively, with the Cummer Lumber Company and the Carpenter-O'Brien Company (predecessor of the Brooks-Scanlon Corporation).

In 1903 the Jacksonville & Southwestern entered into a

contract with the Cummer Lumber Company under the provisions of which it agreed to transport logs of the lumber company at certain specified rates for a period of 15 years. The log rates established pursuant to this contract are frequently referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and as a condition precedent to the acquisition assumed the obligations of that company under its contract with the Cummer Lumber Company. This contract expired in 1918 and was not renewed. Defendant made a similar contract with the Carpenter-O'Brien Company in 1914. This agreement was for an indefinite period and was to be terminated only after the Florida timber then owned by the latter company, consisting of approximately 1,000,000,000 feet of pine had been transported. The movement was to be in trainloads of not less than 30 cars per day, or 60 cars every other day, Sundays and legal holidays excluded, minimum 50,000 pounds per car. It was stipulated that this contract should be subject to federal and Florida laws and to the order of any court or regulatory body of competent jurisdiction.

Pursuant to this contract defendant filed schedules with the Florida commission designed to extend the Cummer scale up to 150 miles. That commission refused to permit the proposed rates to become effective, as they were applicable only when the movement was in trainloads and were not available to all Florida intrastate log shippers. To meet these objections defendant published rates on the Cummer scale basis, effective October 30, 1914, applying generally on logs, except cedar, in carloads, on all its Florida lines for distances up to 150 miles. The record indicates that the rates as thus revised were established by defendant for the purpose of complying with its contractual obligations and not because it considered the Cummer scale proper for general application on log traffic intrastate in Florida. However, the record shows that defendant has never sought permission to increase the level of its Florida rates although the Cummer scale has been effective for many years and considerable traffic has moved thereunder. In 1916 the scale was extended for distances up to 160 miles and in 1918 to 170 miles. The Florida rates in issue are those covered by the Cummer scale as extended, modified by the general percentage changes.

The following statement shows the rates in issue and the earnings[1] per car thereunder:

| Distance | Florida-Georgia interstate[2] | | Florida intrastate[3] | |
|---|---|---|---|---|
| | Rate | Earnings | Rate | Earnings |
| Miles | Cents | Dollars | Cents | Dollars |
| 5 | 2.5 | 12.50 | 1.71 | 8.55 |
| 10 | 3 | 15.00 | 1.71 | 8.55 |
| 15 | 3.5 | 17.50 | 1.71 | 8.55 |
| 20 | 3.5 | 17.50 | 1.71 | 8.55 |
| 25 | 4 | 20.00 | 1.71 | 8.55 |
| 30 | 4 | 20.00 | 1.71 | 8.55 |
| 35 | 4.5 | 22.50 | 1.71 | 8.55 |
| 40 | 4.5 | 22.50 | 1.71 | 8.55 |
| 45 | 5 | 25.00 | 2.10 | 10.50 |
| 50 | 5 | 25.00 | 2.10 | 10.50 |
| 55 | 5.5 | 27.50 | 2.10 | 10.50 |
| 60 | 5.5 | 27.50 | 2.10 | 10.50 |
| 65 | 6 | 30.00 | 2.30 | 11.50 |
| 70 | 6 | 30.00 | 2.30 | 11.50 |
| 75 | 6.5 | 32.50 | 2.30 | 11.50 |
| 80 | 6.5 | 32.50 | 2.30 | 11.50 |
| 85 | 7 | 35.00 | 2.30 | 11.50 |
| 90 | 7 | 35.00 | 2.30 | 11.50 |
| 95 | 7 | 35.00 | 2.60 | 13.00 |
| 100 | 7 | 35.00 | 2.60 | 13.00 |
| 110 | 7.5 | 37.50 | 2.80 | 14.00 |
| 120 | 8 | 40.00 | 3.20 | 16.00 |
| 130 | 8.5 | 42.50 | 3.20 | 16.00 |
| 140 | 8.5 | 42.50 | 3.40 | 17.00 |
| 150 | 9 | 45.00 | 3.40 | 17.00 |
| 160 | 9 | 45.00 | 3.40 | 17.00 |
| 170 | 9.5 | 47.50 | 3.70 | 18.50 |

[1]—Earnings computed on basis of loading of 50,000 pounds per car.

[2]—Applicable on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds, from stations in north Florida.

[3]—Applicable on logs, except cedar, in carloads, minimum 50,000 pounds. These rates are published in amounts per car. They are here converted to basis per 100 pounds.

The level of the interstate rates is admittedly of little concern to the Florida interveners or the Florida commission. They neither advocate nor oppose the extension of the Florida rates interstate into Georgia, but do contend that the Florida rates are renumerative to defendant and [fol. 10] should not be changed. Defendant asserts its purpose to continue the Cummer scale, if permtited to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported, but strongly opposes the use of the Cummer scale as a measure of reasonable rates between Florida and Georgia. The intervening carriers are not in sympathy with defendant's low Florida rates and are also opposed to any reduction in its interstate rates, contending if such a revision were made that competitive considerations would necessitate similar changes in their rates. Neither the intrastate nor interstate log rates of the carrier interveners are in issue.

Complainant's evidence was mainly in support of its allegations under sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the Florida rates were found just and reasonable they should be made to apply on log traffic between Florida and Georgia.

Several comparisons between the Florida rates and the interstate rates for distances up to 170 miles were submitted by complainant for the purpose of showing undue prejudice of log shippers located at Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Ga., and undue preference of Florida shippers located at certain selected Florida points. These comparisons were designed to show merely the rate advantage of the Florida shippers over those located in Georgia in the transportation of Florida timber. No movement under the interstate rates was shown and complainant admits that there is none.

While the record shows that there are 64 sawmills located along defendant's lines in Georgia within 170 miles of Florida, but few of the owners of these mills testified in [fol. 11] support of the complaint. Their testimony indicates that they are interested primarily in the reduction of the interstate rates rather than in the relationship be-

tween the Florida rates and the interstate rates. All but one admitted that an increase in the Florida rates would not benefit them and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates. They stated, in general terms, that there is available timber in Florida which could be economically purchased and transported over defendant's line to their mills in Georgia if reasonable interstate rates were published. The location or quantity of such timber was not revealed.

For the purpose of showing that the Florida rates are relatively low, a cost study was submitted by defendant purporting to show for September, 1926, the estimated cost of transporting logs of the Brooks-Scanlon Corporation from Perry and Carbur, Fla., to Eastport, Fla., the distances being 166 and 144 miles, respectively. The cost per loaded car on this traffic was ascertained to be $19.13. The average weight of the logs was approximately 60,200 pounds per car. On this basis the revenue per car under the Cummer scale was $20.47, a margin of $1.34 per car over the estimated cost of service. Defendant stresses the point that its study covers trainload movements only, and that if the haul were in less than trainloads the cost of service would be higher. Most of the Florida intrastate log traffic is in trainloads. The less-than-trainload movement is unimportant.

The Florida commission introduced a similar cost study to show that the Florida rates are remunerative to defendant. The results reached differ radically from those of defendant. It was estimated that $14.62 represents the approximate cost per car of handling logs in trainloads between the above points, which deducted from the per car revenue leaves a net of $5.85 per car.

[fol. 12] Computation of the foregoing costs has necessarily required certain arbitrary assumptions not susceptible of accurate determination. It can not be said with any degree of certainty that figures thus computed indicate that actual cost of service. Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida int-rstate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida

rates are so low as to cast an undue burden on interstate commerce.

Defendant, while not admitting that the interstate rates assailed are unreasonable, has submitted a proposal to revise them down to the level of the Alabama intrastate log rates effective in that State since June 1, 1925, pursuant to the order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds, between north Florida and Georgia. This scale for distances up to 170 miles, is as follows:

| Distance | Rate Cents |
|---|---|
| 10 miles and less | 2.5 |
| 20 miles and over 10 | 3 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8 |

[fol. 13] The proposed rates are substantially similar to those prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81, for application on logs from points in South Carolina south of Columbia, S. C., to Savannah, Ga., and in Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. The proposed rates are on the same basis as those recently prescribed in Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant has expressed the willingness to adopt these rates from interstate application over its entire system, excluding south Florida. It would also apply these rates intrastate in

North Carolina, South Carolina, and Georgia if permitted by State authorities.

The proposed scale would supersede not only the interstate rates in issue, but also those applicable on logs and short-length blocks from Florida points to Bainbridge, Thomasville, and Metcalf, Ga., for distances not exceeding 150 miles. The latter rates are not in issue and need not be passed upon in this proceeding.

Defendant also proposes to revise the existing south Florida interstate log rates down to a level approximately 15 per cent higher than the proposed north Florida interstate rates. The complaint does not attack the south Florida rates. It is therefore unnecessary for the commission to indicate its approval or disapproval of such rates at this time.

Several rate exhibits were submitted by complainant for the purpose of showing that the proposed interstate rates are unreasonably high when compared with defendant's intrastate log rates in various of the southeastern States; with the average of such intrastate rates, including the Alabama scale; and with the combined average of defendant's intrastate and interstate log rates applicable in the Southeast. Complainant's showing is not persuasive of the unreasonableness of the proposed rates. None of the intrastate rates were voluntarily established except those in Florida. Transportation conditions under the intrastate rates are not shown to be similar to those existing interstate between Florida and Georgia. The force of the comparisons is lessened by the inclusion in the averages of the Florida-Georgia interstate rates, which defendant proposes to reduce, and by the inclusion of the Florida rates, which are shown to be on a low basis.

As to certain of the North Carolina rates instanced it was shown that there is no movement of logs thereunder. The South Carolina rates apply in connection with a minimum of 24,000 pounds, while the proposed rates would apply in connection with a 40,000-pound minimum. Disregarding the differences in the minima, the average loading of logs under the South Carolina rates not being indicated, the rates proposed are for the most part lower than the South Carolina rates. In connection with the Georgia in-

trastate rates the record shows that complainant in 1925 ordered an upward revision in such rates, but later rescinded its order. Complainant's rate expert admitted that the higher rates thus prescribed, at that time, were on a reasonably low basis. Such rates were substantially the same as those now proposed by defendant for interstate application.

Evidence for the Florida interveners was to the effect that any material increase in the Florida rates will either cause them to move their plants to the timber or abandon operations. In either event defendant would lose considerable log traffic, the extent of which can not be readily estimated. It is doubtful if increased Florida rates would compensate defendant for the loss of such traffic. These interveners have expended millions in the development of their properties. Communities have grown up in the vicinity of the mills as a result of the lumber operations. Abandonment of the present mill sites would result in heavy losses not only to the lumber companies but also to their employees. It would cost the Brooks-Scanlon Corporation alone between $3,000,000 and $4,000,000 to move its plant from Eastport. That town, having a population of approximately 5,000, would probably lose most of its inhabitants, as practically every family at that point is said to be dependent upon the operation of the Brooks-Scanlon plant. Other Florida lumber companies and manufacturing communities would be similarly affected. Complainant contends that much of this character of evidence is not relevant to the issues of this proceeding. While such evidence is not necessarily conclusive, it nevertheless may properly be considered along with other facts of record in passing upon the merits of a case of this character.

Several experienced Florida lumber operators and timber cruisers were emphatic in their assertions that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills. They stated that there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, but that successful exploitation of these tracts, because of their limited extent, could only be accom-

plished by the use of portable mills operating in close proximity to the standing timber. They contend that it would be impracticable to ship logs to Georgia under defendant's present interstate rates, or even under rates as low as those of the Cummer scale.

Many of the north Florida mills ship a large percentage of their outbound product by water under relatively low rates. This, coupled with large-scale production, offsets the disadvantage of hauling logs for long distances by rail to the mills. Certain of the Florida interveners admitted that their mills are disadvantageously located and that they would move their plants to the timber if it were not for the heavy expenditures which would be necessitated by such a move. The evidence is convincing that few logs would be transported to Georgia over defendant's line if complainant were accorded interstate rates on the same level as the Cummer scale. It is probable that few, if any, logs would be hauled to Georgia under the present interstate rates if the Florida rates were increased to the level of such rates.

The Florida interveners, the Florida commission, and the Southeastern Forest Products Association contend that the commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden or interstate commerce. They deny that the Florida rates unjustly discriminate against or unduly burden interstate commerce. Numerous decisions of the Supreme Court of the United States and of the commission were discussed at some length in support of these contentions. For example, in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, the Supreme Court stated:

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce * * *

In Hunter Bros. Mercantile Co. v. American Ry. Express Co., 107 I. C. C. 313, the commission said that

"Before we can require a change in the intrastate rate * * * it must appear that the intrastate rate injuriously affects interstate commerce in violation of the interstate commerce act. In some cases intrastate rates affect interstate commerce in ways so manifestly injurious as to make them subject to our control. In other cases the relation of an intrastate rate to movement of interstate commerce is so remote and insignificant that it may properly be disregarded. The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The evidence upon this record does not establish the existence of undue preference of Florida intrastate shippers or localities or undue prejudice of Georgia interstate shippers or localities under the rates in issue. Nor does the record show that the Florida rates are on such a level as to result in any real discrimination against or obstruction to interstate commerce. No specific instance of hurtful discrimination or prejudice has been shown to result from the maintenance of the Florida rates. Testimony for complainant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking. A finding of unlawful discrimination or undue prejudice can not be predicated on a mere assumption or assertion of their existence.

Complainant's allegation of unjust discrimination under section 2 was not pressed.

The commission should find that the rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of Jacksonville, Gainesville, Burnett's Lake, and High Springs to destinations on its lines in Georgia for distances up to 170 miles are, and for the future will be, unreasonable to the extent that they exceed or may exceed the following maximum distance scale of rates in cents per 100 pounds, minimum 40,000 pounds:

| Distance | Rate Cents |
|---|---|
| 10 miles and less | 2.5 |
| 20 miles and over 10 | 3 |
| 30 miles and over 20 | 3.5 |
| 40 miles and over 30 | 4 |
| 55 miles and over 40 | 4.5 |
| 70 miles and over 55 | 5 |
| 85 miles and over 70 | 5.5 |
| 100 miles and over 85 | 6 |
| 120 miles and over 100 | 6.5 |
| 140 miles and over 120 | 7 |
| 160 miles and over 140 | 7.5 |
| 170 miles and over 160 | 8 |

The commission should further find that the Florida intrastate rates assailed have not been shown to cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or undue, unreasonable, or unjust discrimination against interstate commerce.

An appropriate order should be entered.